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FIRST PRINCIPLES IN POLITICS

FIRST PRINCIPLES IN POLITICS

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By WILLIAM SAMUEL LILLY

HONORARY FELLOW OF PETERHOUSE, CAMBRIDGE

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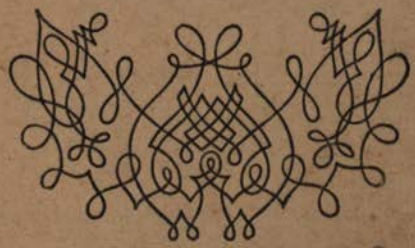
"Oh for a statesman—a single one—who understands the living might inherent in a principle."

SAMUEL TAYLOR COLERIDGE.



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TO THE RIGHT HONOURABLE

WILLIAM HARTPOLE LECKY, M.P.

Dear Mr. Lecky,

When your treatise on *Democracy and Liberty* was given to the world, I had the pleasure of receiving a copy from the author. In expressing my thanks for the gift, I told you that I was engaged upon a work dealing, to some extent, with the same topic; and that I should deny myself the gratification of perusing your volumes, until I had finished the task to which I had set myself. I was anxious to guard against the risk of unconsciously appropriating any of your thoughts.

Three years have passed away since then. At last, I have completed my book and have read yours. And I rejoice to find that, although I write from another standpoint, and pursue a different method, there is much in the conclusions reached by me for which I may claim the sanction

of your authority. It is, therefore, with a special satisfaction that I avail myself of your kind permission to inscribe these pages with your name; a name which, as I have said elsewhere—and I prefer to repeat the words, because they were not written *ad hoc*—may well stand as the symbol of all that is best in the historic literature of our age: impartial accuracy, magisterial serenity, sustained self-command, skill in truly discerning and in logically marshalling facts, power of ratiocination, severity of taste, and purity of style.

But it is not merely in conclusions that I have the happiness of finding myself largely in accord with you. As I venture to believe, we agree in what is the cardinal doctrine of this work—the most fundamental of the First Principles upon which it insists. And my warrant for so thinking is a passage long familiar to me in your *History of European Morals*—a book which, as I well remember, came into my hands when I was an undergraduate at Cambridge, and took me captive by the charm of its diction and the cogency of its dialectic. You there rank yourself among "those moralists who assert that we possess a natural

power of distinguishing between the higher and lower parts of our nature;" and you proceed to illustrate this point by a very striking comparison: "Man is like a plant which requires a favourable soil for the full expansion of its natural or innate powers: yet those powers, both rational and moral, are there: and, when quickened into action, each will discharge its appointed functions." Here we come to the very root of the difference between the two schools of thought which at present divide the intellect of the world. I hold, with you, that reason is the characteristic endowment of man; that it is separated by a whole universe from instinct; and that what you admirably term "progressive energy" is a note of it. The capacity for ethical development is possessed by the human race alone. And the root of the capacity lies in this: that man—and man alone—is *animal rationale*.

Hence it is that I believe in the doctrine of Natural Right. And I think one chief cause of the widespread disbelief in that doctrine is what you term, with just severity, "a very mischievous equivocation in the word 'natural.'" The notion is common that if we assert a Law

of Nature, we imply belief in a state of nature such as Rousseau, and the *philosophes* of the last century, vainly imagined. I suppose the late Sir Henry Maine did more than any one else to popularize this misconception, by lending to it the authority of his great name. It appears to me the chief blemish upon his valuable writings, which have done so much to advance among us the scientific study of jurisprudence, and to which —as I gladly testify—my own personal obligations are considerable. But, assuredly, we must account as utterly unhistoric the remarks in his *Ancient Law:* "The belief gradually prevailed among Roman lawyers that the old *jus gentium* was, in fact, the long-lost code of Nature;" and "the inference from this belief was immediate: that it was the Prætor's duty to . . . revive, as far as might be, the institutions by which Nature had governed man in the primitive state." The Law of Nature, as understood by the great Roman jurisprudents, following the teaching of the philosophers of the Porch, means an objective law of Righteousness, embodied in, and learnt from, the highest part of nature—Reason. And they identified this *jus naturale* with the *jus gentium*, because

it is found in all countries, and is applicable to all men, on whose hearts and consciences it is written. Its dictates are the body of rights, "the obligatoriness of which," to quote the words of Kant, "can be recognized by the rational faculty *a priori*." "No nation," as the Roman orator finely said, "can overthrow or annul it: neither can a senate nor a whole people relieve us from its injunctions." It is a law of absolute and unconditioned authority, ruling throughout the universe, in all spheres of rational existence. It is the ideal type to which positive law should ever more and more approximate, though it can never be wholly realized in human enactments.

It appears to me that if we once lose the conception of this law, we empty life of its true value, which is ethical: we reduce right and wrong—I do not mean in their applications, but in their essence—to a mere question of latitude and longitude, climate and environment, temperament and cuisine. Hooker's indignant language, when he reprobates "their brutishness, which imagine that virtue is only as men will account of it," seems literally accurate. And the curious thing is that writers of the Utilitarian school, while

denying the doctrine of the *lex naturæ*, really found themselves upon it. They must appeal to the rational faculty in support of their contention that man ought to pursue happiness, and, as the more refined of them hold, the higher kinds of happiness. For their "ought," they allow, is incapable of proof. They may not consent to call it an intuition of the practical reason. But that is what it really is, if it is anything more than an arbitrary assumption; it cannot possibly be derived from sensible experience. Of course, there is a Utilitarianism to which both you and I would heartily subscribe: the doctrine that the criterion of the goodness or badness of actions is their congruity or incongruity with man's rational nature. Equally of course, should we agree in rejecting the teaching that the determinative source of moral quality is the free volition of Deity. Right and Wrong, in their nature, are what they are from everlasting to everlasting, and are unchangeable even by the fiat of Omnipotence.

Considerations such as these were long out of fashion in this country. But fashions change. Truth does not. "Truth," in Cudworth's happy phrase, "is the most unbending and incompliable,

the most firm and adamantine thing in the world." On that foundation I have endeavoured to build in this work. However many its defects, of which no one can be more conscious than myself, I am very sure that, in offering it to you, I may truly use the words of Montaigne: "C'est icy un livre de bonne foy."

I am, dear Mr. Lecky,

Very truly yours,

W. S. LILLY.

Athenæum Club,
March 25*th*, 1899.

SUMMARY.

CHAPTER I.

THE FOUNDATION OF THE STATE.

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A striking characteristic of the present day is the well-nigh total effacement, from the general mind, of the idea of law 1

Most so-called "laws" are not laws at all; they do not possess that character of necessity which is the essence of law 1

This is true, for example, of the laws of conduct presented to us by Utilitarian ethics, and of the laws of comfort from which they are derived . . 1

It is true, for the most part, of the so-called laws of Political Economy 2

Again, if we keep strictly within the domain of the experimental sciences, we have no right to speak of laws; for necessity has no place in pure physics. It is a metaphysical idea 2

To insist upon this truth is not mere logomachy. The idea of law, as a function of Reason, is of the utmost

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practical importance. Lose it, and you derationalize the universe 3

The age in which we live supplies an illustration of this truth. Everywhere, except in the experimental sciences, we find doubt extending to all first principles of thought and action. The temper of the times is anarchical 4

This arises, in great degree, from the absorbing devotion of the age to those sciences, and from the claim made for them as the one criterion of reality . . 5

This tendency of the age is strikingly exemplified in the domain of politics, where "no one acts on first principles or reasons from them" . . . 6

The present work is the outcome of the deep conviction that "nothing is that errs from law:" that it rules in the political province, as in every segment of human life 8

The only firm foundation upon which the State can be built is the moral law, in virtue of which man is a being invested with rights and encompassed by duties. The natural rights and the natural duties of man are the primary postulates of politics . . 9

Natural rights and *natural* duties. "There is a system of rights and obligations which *should* be maintained by law, whether it is so or not, and which may properly be called natural." The ideals constituting this absolute jural order are the first principles of political philosophy 9

Of these, the ideal of justice is the first, and embraces, in some sort, all the rest. Hence the dictum "Justitia fundamentum regni" 10

CHAPTER II.

THE ORIGIN OF THE STATE.

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At the basis, then, of Politics lies the question What is just? Political Philosophy is a chapter in the Philosophy of Right 12

In it we may proceed either synthetically or analytically. Both the *a priori* and the *a posteriori* methods are equally valid and valuable 12

The *a priori* method has never been popular in England; and the absurdities and atrocities of the Jacobin publicists, who followed it exclusively, overwhelmed it, not unnaturally, with discredit 12

Their mistake, however, did not lie in their belief that there are first principles in politics, but in their gross misapprehension of those principles, and in their fond conceit that what might suit the phantoms of their ratiocination must also suit the inhabitants of eighteenth-century France 12

Quite other is the true use of first principles in politics: they must be admitted with the necessary qualifications of time and place. 13

The topic of the present Chapter is the Origin of the State. The first point is what history has to tell us about it. The prehistoric condition of our globe is not a subject which need detain us 15

Man, as we meet with him in history, possesses exactly the same distinctive characteristics in the earliest annals of our race as in the latest; and one of them is that he is a political animal 16

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So much is certain. Equally certain is it that the polity which earliest history reveals is monarchical. Of civil society the germ is the family, which is an embryonic or rudimentary State 17

Such is the answer of history to the question *how* the State arose. If we ask of philosophy *why* it arose, the answer is that in living gregariously, and not in isolation, men obey a law of their nature. Man is a political animal 19

Here is the true explanation of the reason of human commonwealths: here, and not in the theories of contract, of might, of divine right, of utility, though in all these there are elements of truth 20

But man is not the only animal that lives in community. For example, bees and ants display an instinct analogous to that which gives rise to human commonwealths. What is the essential difference between human society and animal society? 21

To answer that question we must ask another. What is the essential difference between men and animals? . 21

It is a question of psychology—of comparative psychology. The lower animals exhibit many of man's psychical powers, but these belong to the sensitive faculty. We cannot, without absurdity, attribute to them acts of our intellectual faculty: mental as well as sensuous perception 21

Human knowledge begins with sensuous perception, whereby *phantasmata* are presented to the intellect . 22

We go on to subject those phantasmata to the judging faculty—to cognize them 22

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And from cognition we may, by comparison and abstraction, advance to general concepts 23

These are the three steps in human knowledge, Experience, Understanding, Reason. The lower animals have in common with us Experience; they possess also a power of associating their experience by an exercise of memory and expectant imagination (*facultas æstimativa*) which presents some analogy with—but is not—Understanding; they have not that apprehension of general concepts which is the essential characteristic of Reason 23

It is in virtue of man's distinctive faculty of Reason that he is a *person* 23

From it spring those endowments which clearly mark men off from the other animals, and the State from animal communities 24

First, Will, whence morality. It is through the free activity of the rational will that the State, though given in nature, and arising from an original necessity, is shaped and established 25

Second, Verbal Language, the direct outcome of that apprehension of universal relations to which Reason is essential 26

Third, Progress, the result of Reason, manifesting itself in Will and expressing itself in Language . . 27

Such are the essential differences between the State which, in its lowest form, is an expression of Reason; and animal communities which, in their highest form, are manifestations of instinct 29

CHAPTER III.

THE END OF THE STATE.

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THE next step in our inquiry is, What is the End or Object of the State? 30

The nature of a thing and its final end are, in some sort, identical. If we know its nature, we may conclude to its end. What, then, is the nature of the State? . 30

The conception of the State most common in this country is, that it is a mere machine, driven by the forces of public and private interest: a sort of huge insurance society, the taxes being the premium. Hence the conclusion, so widely prevalent, that its primary or, perhaps, sole end is "the protection of the persons and property of men" 30

This is a very inadequate view of the End of the State: as inadequate as the account of man offered by the Utilitarian philosophy upon which it rests . . 31

No doubt the protection, not of "the persons and property of men," but of the rights of person and property, is the duty of the State 31

But what is a right? and what is the relation of the State to rights? The answer to these questions may enable us to discern the true nature of the State, and to conclude thence to its end 31

A right is commonly, and correctly, defined as a moral power residing in a person, in virtue of which he calls anything his own 31

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It issues from the impulse (*Trieb*) to maintain an ethical existence, and therefore can be predicated, in the proper sense, only of man; for man, alone, is an ethical animal —a *person* 32

It is from the ground of man's personality that rights and their correlative duties spring up . . . 33

All his rights are but aspects of his great aboriginal right to belong to himself, to develop his personality, to do right 33

All spring from Right, an absolute jural order given in reason, and independent of free volition, which embraces and harmonizes all particular rights: the ideal basis of, and the warrant for, positive law . 33

As a *person*, then, man has rights which, attaching to human nature, may be called natural. But personality is realized and developed only in society; it implies reciprocal rights 34

Of these reciprocal rights positive law is the guarantee and the shield. But what is positive law? . . 34

It is the rational or ethical will—the two adjectives mean the same—of the commonwealth: the expression of the Reason common to all; the recognition and sanction by the State of a portion of that system of correlative rights and duties which Reason reveals 34

The State is the realized order of Right. As the organic manifestation of the personality of a people, it may properly be called an organism or a person. It is an organism, for it is "a great body, capable of taking up into itself the feelings and thoughts of a people, of uttering them in laws, and of realizing them in

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facts." It is a person, for rights and duties, the distinctive notes of personality, attach to it . . 36

Being such, its end is to define, maintain, amplify, and secure its own rights and the rights of its subjects. We will consider this a little in detail, beginning with the lower order of rights—the rights of individual persons, of man as man 37

Until a century ago it was well-nigh forgotten, throughout the greater part of the Continent of Europe, that such rights exist. The French Revolution brought them again into recognition. 37

However we may, and must, demur to many propositions of *The Declaration of the Rights of the Man and the Citizen*, which served as its manifesto, we should, at all events, recognize that it impressed deeply upon the popular mind the truth that man does possess certain rights as man 38

It is not necessary here to consider the various ways in which these rights have been classified by philosophers and jurisprudents; but it is of importance to insist that they all spring from "the self-same fount of right," and that they "are governed by the unity of an inherent co-ordinating idea" . . . 38

It was the apprehension of this truth which led Spinoza to specify as the end of the State *quoad* the individual, liberty: namely, "that men should use in security all their endowments, mental and physical, and make free use of their reason" . . . 38

Four manifestations of this aboriginal right of man to freedom will here be touched on. The first is the right of existence—liberty to live; the next, the

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right to the self-determined use of the human faculties, mental and physical, which is personal liberty; the third, the right of property, which is realized liberty; the fourth, the right to be considered in the legislation and government of the commonwealth, which is political liberty . . 39

These rights of the individual are not absolute: they are conditioned by duties, and although, in themselves, they are not created, nor abrogable, by positive law, they are held in subordination to the rights of the State in which they acquire validity and coerciveness. We will dwell a little on both these points . . 39

The aboriginal rights of the individual are conditioned by duties. Thus the right of existence is conditioned by the duty of labour for the benefit of the community. No one capable of doing any useful thing has a right to otiose existence 39

The right to personal freedom is conditioned by the duty of respecting those limits within which right resides: it does not imply a licence to do whatever a man likes with his endowments, whether of body or mind . 40

As little does his right to property imply the same unlimited dominion over it. Property is fiduciary: it is held for the benefit, not merely of the proprietor, but of the commonwealth; and the respect due to the form in which it exists, in any given condition of society, depends upon its practical working . . 43

So, too, the right to political liberty—to be considered in the legislation and administration of a country—is conditioned and limited by duties. A man's right to a share of influence in the State corresponding with

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his personality, is fiduciary: it is not an absolute possession to be employed for the gratification of interest, pleasure, or caprice; it is a trust precisely because it is a right 47

But the rights attaching to man as a person are also limited by the rights of the State in which they acquire validity and coerciveness 50

The State is the nation in its corporate capacity; and the rights of the organic whole come before the rights of any constituent part. The community, taken collectively as forming a moral body, is superior to the community taken distributively, in each of its members 50

The rights of the State are not, of course, absolute, any more than are the rights of the individual. As an association of moral beings, its power has moral limits: and grave infringement of those limits invalidates its moral claim to obedience . . 51

We may say, then, that the End of the State, both for itself and its subjects, is a complete and self-sufficient existence; the development of its own personality, and of the personalities of its subjects, under the law of Right. It exists for the well-being of the whole, by means of the constituent parts, and of the constituent parts by means of the whole . . . 52

And we must understand well-being in both senses of the word civilization: not only as signifying the kind of improvement which distinguishes a wealthy and prosperous nation from savages and barbarians, but also, and far more, as denoting eminence in the best characteristics of man and society . . . 53

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The roots of human progress are probity, honour, the capacity of self-sacrifice, the subordination to high ideals. They are essential to the security, influence, and dignity of the State, which are the conditions and the means of the security, influence, and dignity of its subjects. For its subjects are itself . . 53

CHAPTER IV.

THE FUNCTIONS OF THE STATE.

The End of the State, then, is the vindication and development of its own rights, and of the rights of its subjects. What are its Functions in promoting that End? 55

They will, of course, vary vastly in the vastly varying stages of social evolution. What will be attempted in this Chapter is to indicate the general principle which should determine the sphere of the State's action, and to illustrate it by exhibiting some of its applications to the present condition of European society, with especial reference to our own country . 55

The primary right of the State, as of the individual, is, to be. And war, not peace, being the law of life, its first function is to maintain, in a condition of the utmost efficiency, such fleets and armies, and other preparations for war, as its security against rival States demands. This is obviously the condition of its external peace 56

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Equally obvious is its function to maintain its internal tranquillity by its magistrates and police . . 56

The right of the State is not merely to existence, but to complete existence: an existence in accordance with the dignity of human nature. Hence, among its functions must be reckoned the promotion of civilization in both senses of the word 56

So much seems clear. The real difficulty is to determine what are the proper limits of the State's interference with individual action 57

The true principle would appear to be that the State should leave free all interests and faculties of its subjects, so far as is consistent with the maintenance of its own rights. It is no part of its functions to do for them what they can do for themselves better, or even as well. It is a part of its functions to allow, and prudently to aid them, to develop their own personality, for their own and the common welfare . 57

This is the just mean of State action in respect of the subject. It is equally removed from a false paternalism and a false individualism . . . 58

We will now, in the light of this general principle, consider seven questions of the day to which it is applicable 60

First. What is the Function of the State as to Education? 61

The claim is made, and has largely prevailed throughout the civilized world, that the education of children is the immediate concern of the State. This claim is, upon the face of it, monstrous. Of all liberties bound up with, and flowing from, human personality,

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one of the most sacred is the father's right to educate his children as his conscience dictates. . . 61

The State, upon the other hand, has the right and the duty to maintain for its subjects the conditions under which a free exercise of their faculties is possible, for their own and the general advantage. And in view of that end it is warranted in insisting that a modicum of instruction be acquired by them all. . . 61

That is the function of the State with regard to primary education. Its function with regard to education of a higher kind is similar. For example, it is bound to see that the Universities and great public schools efficiently discharge the duties entrusted to them, while leaving them the greatest possible liberty as to methods and details 62

But what is unwarrantable is, that the State should become the general schoolmaster of its subjects. Its usurpation of this function is a gross infringement of individual right and a deadly blow to that individuality of character which it is bound to cherish and protect, as an indispensable element of national well-being 63

Second. What is the Function of the State *hic et nunc* with regard to Religion? 64

We live in an age not of religious unity, but of religious disunity; in an age not of faith, but of unfaith. And the attitude of the State towards religion in such an age, must be far other than what it was in ancient Greece or in medieval Europe. The modern State is compelled, by the nature of the case, to profess itself "incompetent in the matter of cults". . . 65

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In such an age the function of the State with regard to religion seems to be benevolent neutrality towards all cults which do not directly conflict with its own rights and duties 65

Certain it is that, as the Western world at present exists, no State can fairly *adopt* any religious profession. But it does not in the least follow that where an Established Church already exists, it should be disestablished, and its property pillaged. . . 66

Third. What is the Function of the State as to Morality? 69

The State is vitally interested in the ethical life of the country, and should do all that it properly can to maintain and heighten the morality of its subjects. It is not the office of the State directly to make men moral. That is impossible. Morality is of the will. A power of choice is a condition of virtue . . 69

We may say that the function of the State as to morality, is, first, to maintain the conditions necessary for freedom of individual choice, and secondly, to encourage the helps and restrain the hindrances to right choice, so far as it can without infringement of that freedom 70

Three illustrations of this principle :—

(*a*) It is the right and duty of the State to check the national scandal and the national mischief of drunkenness, by limiting the places and hours at which, and the persons to whom, intoxicating liquors may be sold by retail. It is neither the right nor the duty of the State to enforce teetotalism upon all who are not rich enough to keep a supply of alcoholic drinks in their own houses 70

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(*b*) As to sexual ethics, it is the function of the State to guard, with the most anxious solicitude and the deepest reverence, the sacrosanct rights arising out of marriage, in no wise to countenance concubinage, and by wise regulations to minimize the mischiefs resulting from the practically necessary evil of prostitution 73

(*c*) It is the function of the State effectively to restrain, and severely to punish, cruelty to the lower animals, as a demoralizing and cowardly abuse of power . 87

Fourth. What is the Function of the State with regard to Public Hygiene? 89

It is a mere truism to say that the State should care for the corporal soundness of its subjects. In practice its greatest difficulties in discharging that duty arise from the tyranny of faddists 89

Fifth. What is the Function of the State in the sphere of contract? 91

Certainly, to preserve and vindicate its freedom . . 91

But this freedom is not absolute; it is a freedom on conditions prescribed by the State for the maintenance of general right 91

A contract is a promise which the State recognizes as binding, and will enforce with all the power of the Courts 92

And so viewed it is a limitation of a man's freedom: it is a binding agreement for the diminution of personal liberty 92

There are many things as to which the State does not permit such freedom; well-recognized classes of

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agreements which it does not and should not validate and enforce 92

Conspicuous among such agreements should be reckoned those tainted by usury, in respect of which it is the function of the State to intervene for the protection of individual rights and of its own supreme right . 92

Equally justifiable, and indeed necessary, is its intervention, in many cases, for the restriction and regulation of industrial agreements. In such contracts the action of private interest cannot be relied upon as all-sufficient. Human labour is not mere merchandise . 95

The contrary doctrine, insisted upon by the old "orthodox" Political Economy issued in the establishment of a tyranny of capital of the most odious kind, based upon a fictitious freedom of contract 98

This doctrine has now largely fallen into discredit, chiefly through the influence of the German historical School of Political Economists, which has laboured successfully to overthrow the old doctrine of *laissez-faire*, to bring out the insufficiency of personal interest as the sole rule of economic action, to insist upon the principle that the State, as an organism—and an ethical organism—has a most important function with regard to the industrial contracts of its subjects . . 99

To the apprehension of this principle we owe the long series of Truck Acts, Mines Acts, Factory and Workshop Acts, and the like measures, which have, in some degree, broken down the tyranny of capital: but in some degree only. Even now we see multitudes working inhuman hours, with unremitting toil, for wages seldom sufficient, and often a mockery, in horrible insanitary conditions. . . . 100

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For the redress of these horrors we must look to the ever-deepening apprehension of the truth that side by side with those rights of capital, which the State so efficiently protected by its laws that they became wrongs of the most terrible kind, there are rights of labour which the State is equally bound to protect . 101

Such is the right to *real* freedom of contract . . 101

The right to a *justum pretium*, or fair wage . . 102

And the right to some public provision, other than modified imprisonment in a workhouse, for old age . 105

The interference of the State may also be legitimate and necessary, when industrial contracts issue in strikes and lock-outs 105

Combinations of workmen and capitalists are in themselves perfectly justifiable; strikes and lock-outs may, on occasion, be quite justifiable 106

Which is not the same thing as saying that all the methods of Trade Unions are justifiable . . 108

Or of Rings and Trusts 112

But it is absurd to suppose that individual freedom is, or ever can be, the sole force by which society is regulated: labour is a social function; property is a social trust; and the organized polity—the State—in which only profitable labour is possible and property is valid, may rightly determine on what conditions labour should be done, and property possessed 113

It is the duty of the modern State to repress the industrial war waged by means of strikes and lock-outs, just as

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it was the duty of the medieval State to put down private war 115

But the direct intervention of the State is not the only way of dealing with the social and economical relations between Capital and Labour. There is also the more excellent way of industrial association . 116

As to which the nineteenth century, and the twentieth, might well learn a lesson from the Middle Ages . 116

Sixth. What is the Function of the State with regard to the land? 118

In considering that question, we must first remember that there is this great difference between the soil and other subjects of property—its quantity cannot be multiplied. Hence it is that a man's ownership of land must be regarded as being of a more limited and restricted kind than his ownership of chattels . 118

The doctrine of the English law that a man can hold only an estate in land, is a perfectly sound doctrine, and the conception of land as an exchangeable commodity, differing only from others in the limitation of supply, is a faulty conception 119

The true justification of private property in land is, that, as a matter of fact, it tends to the general benefit: and the test whereby the advantage of one land system over another should be judged, is the advantage of the community 119

Such is the first principle governing this matter. And if in the light of it we consider the land system of England, it is difficult to understand how any intelligent person can maintain that this system

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ought not, in the public interests, to be largely modified 120

The English land laws, enacted chiefly by landlords, sacrifice to their interests, in many ways, the just claims of tenants and of the community at large; and contrast most unfavourably with the corresponding provisions of the Civil Law and the Code Napoléon 121

No doubt the existence of large landed properties in this country is more for the common good than would be the universal prevalence of small real estates, the land being the only basis possible among us of a "directing class." But, side by side with the large properties, there should be the lesser ones of yeomen and peasants. It is a function of the State to promote by wise legislation an immense increase of small landowners 121

Seventh. What is the Function of the State with regard to the Social Order? 123

"Our present type of society is, in many respects, one of the most horrible that has ever existed in the world's history: boundless luxury and self-indulgence at one end of the scale, and at the other a condition of life as cruel as that of a Roman slave, and more degraded than that of a South Sea Islander" 124

The vast disparity of condition which exists in the social order is a huge social danger. Too great inequalities, too violent contrasts in the distribution of wealth, are contrary to the true law of the social organism. A remedy must be found for "the shame of mixed luxury and misery which is spread over our native land" 126

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Socialism proposes one. No doubt, in much of its criticism of the evils of the existing social order, Socialism is well founded. But the nostrum which it recommends for their cure necessarily involves infinitely worse evils 127

The real value of Socialism lies in this: that it is the inevitable and indispensable protest of the working classes, and their aspiration after a better order of things: and a function of the State is to "extract from the interminable popular and philanthropic utterances constituting Socialistic literature, the underlying ideas, and to translate them into scientific conceptions of Right" 135

CHAPTER V.

THE MECHANISM OF THE STATE.

The truth that civil society is an organism must not make us forget the truth that it is also a Mechanism 136

"The tendency to political life is found in human nature; and so far the State has a natural basis: but the realization of this tendency has been left to human labour and human arrangement" . . . 136

The question to be considered in this Chapter is, What are the true principles on which that tendency should be realized? What is the right arrangement of the State? 136

One great first principle is that there should be a well-marked separation between its several powers. In

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the existing state of society the classification of Montesquieu is recognized as indicating the true method. It is universally admitted that the legislative, the administrative, and the judicial provinces ought to be kept apart 137

Although all this is admitted in theory, it is not easily realized in practice. "The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism" . . . 137

The form of government is, in itself, a matter of less importance than the spirit in which the institutions of a country are worked. There is no immutably best form 137

The best form of government for a people is that best fitted to the elements of which it is composed, to the period of its development, to its local habitation and historic traditions 138

The accommodation of the mechanism of the State to the exigencies of any given condition of society, is one of the gravest problems of practical statecraft . . 138

We live in an age of representative government, or self-government. The topic to which this Chapter will be confined is, What are the first principles on which such government should be framed? . . . 138

A very common conception of representative or self government reduces it to a sum in addition, making it consist in assuring the preponderance of the greater number of the votes of men—that is, of the opinions expressed by their votes 139

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But who that is not given over to a strong delusion to believe a lie, can really value the individual opinion of the average voter upon any problem affecting the interests, especially the larger and remoter interests, of the commonwealth? If self-government really meant the preponderance of the greater number of opinions, self-government would stand condemned by its intrinsic absurdity 139

But this is not the true account. The principle upon which self or representative government rests, is directly deducible from the nature of civil society as an ethical organism 140

The ideals of Right which constitute the absolute jural order, whence positive law derives moral and rational validity, are binding upon the conscience of the State, as such, just as they are binding upon the conscience of the individual, as such: they are the fundamental principles determinative of the proper construction of a polity; and of them the ideal of justice is the first, and embraces, in some sort, all the others . . 140

And justice is "the constant and perpetual will to render to every man his right." In the organization of the State the problem is to assure to each subject that political prerogative which is really his 140

A man, as an ethical being in an ethical organism, is entitled to some share, direct or indirect, of political power—a share correspondent with his personality. He has a right to be valued in the community for what he is really worth 141

In so far as men are in truth equal, they are entitled to equal shares of political power. In so far as they are

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in truth unequal, they are entitled to unequal shares of political power. Justice is in a mean—it lies in the combination of equal and unequal rights. . 141

In a civilized community we find vastly varying individualities. We find also, as a result of those varying individualities, a number of classes and interests, diverse but dependent upon one another, and all necessary to the perfection of the body politic. Hence the necessity for the due representation of the local and professional interests and capacities of the commonwealth 141

A representative government, then, as its name implies, should represent all the elements of national life, all the living forces of society, in due proportion. All should be subsumed in the reason of the organic whole. Its true ideal is that it should be a city at unity with itself; the unity of diverse activities working, each in its own mode, for the common good, under the law of Right 143

This is the true ideal of representative or self government. Its realization is a problem not so much of political science, or of political philosophy, as of practical statecraft, which must be differently worked out in different countries and at different periods . . 143

It is not a new problem. Representative government existed, in one form or another—not to go back further—throughout medieval Europe. The essential characteristic of that medieval regimen was that it represented groups, classes, institutions. Thus, in England, where it prevailed till the passing of the first Parliamentary Reform Act, it was "an organized collection of the several orders, states, or

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conditions of men . . . recognized as possessing political power." Of contemporary attempts to solve the problem of representative or self-government, the Prussian, Austrian, and Belgian are specially interesting 144

In France, and in the countries which have framed their political institutions upon the French model, representative government cannot properly be said to exist. The French system is not an organic, but an atomistic system. The only element of the national life of which it takes account is mere numbers. For the representation of other elements far more important in the body politic, it makes no provision . 149

As little can the French system be said to secure self-government. In the individual man, self-government means the supremacy of the intellectual nature over the sensitive; the predominance of the moral over the animal self; the subordination of the lower powers and faculties to the higher. And so he realizes his proper end as a rational being . . 150

This is the true account of self-government by the individual man. It is also the true account of self-government by a nation of men. For the State "is the objective, and, so to speak, normal form in which the manifoldness of the subjects seeks to combine itself into a unity." The man "who to himself is a law rational" alone realizes the true idea of self-government. We must say the same of a nation . 150

Manifestly the man who is carried about by every storm of passion, by every wind of impulse, by every gust of emotion, is not self-governed. Nor is the State that is so swayed. But in every commonwealth the masses represent passion, impulse, emotion . . 151

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Passion, impulse, emotion, no doubt have their proper office in the State, as in the individual man. But whether in the individual man or in the State, they must be subjected to the only rightful law-giver and governor—Reason 151

It is one function of political parties to be the organs of passions, impulses, emotions; and such parties play an important part in the modern State. It will be well, therefore, briefly to consider political parties as they exist in this age, and the party government in which they issue 151

The original home of party government is England, whence other countries have adopted it, with more or fewer changes. At the accession of the House of Hanover it was definitely established among us . 152

Burke's apology for party government . . . 156

Bluntschli on *The Character and Spirit of Political Parties* 158

The party system is unquestionably valuable as securing an exhaustive criticism of, and a thorough examination into, the conduct of the Government . . 161

But it is easy for a party to degenerate into a faction . 162

And the tendency of representative bodies, driven by party interests, which are often private interests in disguise, is to go beyond their proper function of watching and supervising the administration, and to attempt themselves to administer . . . 163

It remains to speak of the function of the chief of the State in representative or self government, as existing at the present day 165

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A chief of some sort there must be, whether he hold the supreme magistracy for life or for a term of years. Limitations of his prerogative there must be, for the idea of self or representative government is incompatible with the idea of an autocratic ruler. A first function of constitutions, written or unwritten, is to prescribe those limitations . . . 165

Limited or constitutional monarchy is no more the creation of modern times than is representative or self government. For example, we find such monarchy at the very beginning of our history. The distinctively English idea of kingship, introduced by Cerdic and Cymric his son, is the corner-stone upon which the existing edifice of our political liberties rests . . . 165

British monarchy has grown into its present form "occulto velut arbor ævo," ever manifesting that adaptation to environment which is a chief law of life. Perhaps it is among the chief achievements of England in practical politics to have realized the true idea of modern constitutional monarchy . . 166

This type of kingship while it confers upon the Sovereign indefinite freedom for good, effectively minimizes his power for evil. It leaves to the Royalty the pageantry and prestige of power, and keeps for the nation the substance of it 167

The pageantry and prestige of a throne are of much utility in the mechanism of the State. Man can be governed only through his imagination 168

Perhaps the absence from the Third Republic of all that appeals to the imagination, in some degree explains the anarchical animalism now prevailing in France . 168

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Imagination is a faculty absolutely necessary to *human* life. It is at the basis of civil society. Emotions are called forth by objects, not by our intellectual separation and combination of them. Mere abstractions and generalisations do not evoke feeling . . 168

Loyalty, which means devotion to persons, springs eternal in the human breast. And nowhere is it more eminently seen, more beautifully displayed, than in the Teutonic races 168

In Englishmen there is innate a veneration for the men and women in whom the institutions of the country seem—so to speak—embodied in visible form . 168

But that is not all. The moderating, controlling, restraining, guiding influence exercised by the British Sovereign is assuredly most real and most important, although, from the nature of things, it is usually most hidden 168

The duties of limited monarchy are among the most difficult and delicate that can devolve upon any human being. They are also of singular complexity when the Monarch is, so to speak, the central principle of a vast and widely spread political mechanism, such as that united under the British Crown . . 169

Of this unity the Crown is not merely the type and symbol, but also the efficient instrument . . 169

A cogent argument for the descent of the Crown in a princely family 169

But the British Crown is something more than the centre and instrument of national unity: it is the effective

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pledge of moderation and longanimity, of uprightness and honour in public life 170

Two examples from other nations in illustration of this truth 170

CHAPTER VI.

THE CORRUPTION OF THE STATE.

It is the constant peril of the State that its authority should be misused for the exclusive or undue promotion either of individual or of class interests . 172

If this happens, whatever be its form—whether preponderating power be vested in one, in a few, or in the many—its true end, the maintenance and amplification of public and private rights, in general, is, more or less, defeated 172

When, in the place of that end, the advantage of the ruler, or ruling class, is solely or unduly pursued, it becomes a perversion (παρέκβασις). The Monarch is converted into a Tyrant, the Aristocracy into an Oligarchy, the Democracy into an Ochlocracy. But of these three varieties of the corruption of the State, the last is incomparably the worst. It is the final form of the degeneracy of all governments . . 173

This degeneracy, or corruption, as existing in the present day, is the topic of the present Chapter. It is the prevailing disease of the body politic in the most civilized nations 173

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First, an inquiry will be made into the genesis of this kind of Democracy; next, it will be judged in its principles and in its working; and lastly, the various remedies proposed for its evils will be considered . 173

Modern Democracy is the direct issue of the French Revolution. So much will be admitted on all hands 173

The French Revolution, whatever else it was, or was not, —and it was much else—was the victory of a merely mechanical or arithmetical principle in the political organism, the principle of counting heads: the principle that the will of the greater number shall prevail, even if in error, over the will of the most intelligent of minorities. It is this characteristic of modern Democracy which differentiates it from all that the world has hitherto known by that name, and which led Mill to denounce it as "False Democracy:" a usurpation of the name of Democracy veiling exclusive government by a class . . . 177

But Mill is the voice of one crying in the wilderness. The chief—perhaps only—principle of the political party with which he was associated, now is the Jacobin sophism against which he so earnestly contended—that a country should be governed "by a mere majority of the people, exclusively represented," that is, by their hired mandatories; that the foundation of the public order is a sum in addition . . 181

No one has done more than Mr. John Morley to indoctrinate that party with this sophism . . 183

For him the French Revolution is "a new gospel;" Robespierre is "the great preacher of the Declaration of the Rights of Man;" and the sophisms and

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sentimentalities of Rousseau are the Alpha and Omega of politics 183

He proclaims it as a "great truth" that a nation "consists" of "the great body of its members, the army of toilers," that "all" institutions—*all*, without exception—"ought to have for their aim the physical, intellectual, and moral amelioration of the poorest and most numerous class," which he terms "the People:" and insists that, unless we have paid members of Parliament, "we cannot be sure of hearing the voice of the People" . . . 183

Such is the history, and such the substance, of that new political movement specially characteristic of this age, which may be properly called "False Democracy." It is false because it does not really mean the rule of the Demos, or People. "The poorest and most numerous class" is not the People. It is not even the most considerable element of the People. There are other elements far more important in a nation than poverty and numbers . . . 184

It is false, again, because it rests upon the manifest sophism of the equivalence of all men in the body politic: a sophism contradicted both by physical and political science 184

"Equal voting is in principle wrong." It is wrong because it is contrary to the nature of things, which is ethical; because it is *unjust* . . . 185

It is unjust to the classes, for it infringes their right as persons to count in the community for what they are really worth; it is tyrannously repressive of the better sort 185

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It is unjust to the masses, for it infringes their right to the guidance of men of light and leading, and subjects them to a base oligarchy of vile political adventurers 186

It is unjust to the State, which it derationalizes, making it "not the passionless expression of general right, but the engine of individual caprice, under alternate fits of appetite and fear" 186

Before passing on to survey the actual working in the world of this False Democracy, and the corruption of the State in which it issues, three apologies put forward for it must be briefly considered. They may be termed respectively, the Abstract or *a priori*, the Utilitarian, and the Sentimental . . . 186

The *a priori* defence of False Democracy is formulated by Rousseau in his doctrine of the Social Contract. 186

This contract is wholly fictitious. To expose Rousseau's political sophisms is to kill the dead over again. And yet those sophisms constitute the stock-in-trade of Continental Radicalism 189

The Utilitarian apology for False Democracy is, in effect, that all people seek what it is to their interest to have: that it is to the interest of the majority to have good government; and that therefore the majority should bear rule 190

But the Utilitarian apology for False Democracy, if tested by *facts*, is as untenable as the *a priori*. The conception of man as an animal dominated by self-interest is quite unreal. Man is habitually swayed by a number of impulses, emotions, passions, hallucinations, altogether unaffected by Utilitarian calculations. Again, to desire one's own advantage is one

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thing; to know how to attain it is quite another. Further, it does not in the least follow that what is for a man's private advantage is for the general benefit. And, with universal or quasi-universal suffrage, the number of voters who are capable of even grasping the idea of the general benefit, must of necessity be infinitesimal 190

The Sentimental apology for False Democracy rests upon the belief—or profession—that the instinct of the masses never, or hardly ever, goes astray; that it is really a form—an unconscious form—of right reason, and the most trustworthy . . . 193

But the annals of the world do not show that the unreasoning instinct of the masses has been invariably, or even frequently right: they show that it is usually wrong. The Sentimental apology for False Democracy is as untenable as is the *a priori* apology, or the Utilitarian apology 196

And if we survey the working of False Democracy in the world around us, we find that it issues in the utter corruption of the State. This is so in its birthplace, France 198

And here France may stand for the type of the Latin races generally. 206

In Germany it has been kept under by the Hohenzollerns: and the wisest thinkers there own that its establishment would be fatal to their country . . . 206

In the United States of America, where False Democracy has had free course, and is glorified, it has resulted in

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the exclusion of the first minds of the country from public life, as something too mean and sordid for an honest, self-respecting man to meddle with: "the Government is below the mental and moral level even of the masses". 208

In England, the Reform Act of 1832 made a new departure in political life: it rased out "the sacred principle of a representation of interests," and introduced "the mad and barbarizing scheme of a delegation of individuals" 217

The Reform Act of 1832 was the beginning of a series of similar statutes, underlain by the Rousseauan, or Jacobin principle of the political equivalence of men and the absolute right of numerical majorities; and each carrying that principle further. It was the introduction into the country of political atomism, of a representation of mere numbers . . . 218

The net result of them, and of the accompanying changes in local government is, that if the English system, as it exists at this moment, were really representative, all power would be in the hands of the manual labourers, skilled and unskilled . . . 219

Both the great political parties are committed, implicitly, to the principle of False Democracy; and the only means by which either can obtain or retain office, is by doing homage to it 220

What is, practically, universal inorganic suffrage now prevails in England as in France . . . 221

The question then arises, Why has it not, as yet, produced in this country so much mischief as in that? . . 222

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In such an age the function of the State with regard to religion seems to be benevolent neutrality towards all cults which do not directly conflict with its own rights and duties 65

Certain it is that, as the Western world at present exists, no State can fairly *adopt* any religious profession. But it does not in the least follow that where an Established Church already exists, it should be disestablished, and its property pillaged. . . 66

Third. What is the Function of the State as to Morality? 69

The State is vitally interested in the ethical life of the country, and should do all that it properly can to maintain and heighten the morality of its subjects. It is not the office of the State directly to make men moral. That is impossible. Morality is of the will. A power of choice is a condition of virtue . . 69

We may say that the function of the State as to morality, is, first, to maintain the conditions necessary for freedom of individual choice, and secondly, to encourage the helps and restrain the hindrances to right choice, so far as it can without infringement of that freedom 70

Three illustrations of this principle :—

(*a*) It is the right and duty of the State to check the national scandal and the national mischief of drunkenness, by limiting the places and hours at which, and the persons to whom, intoxicating liquors may be sold by retail. It is neither the right nor the duty of the State to enforce teetotalism upon all who are not rich enough to keep a supply of alcoholic drinks in their own houses 70

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(*b*) As to sexual ethics, it is the function of the State to guard, with the most anxious solicitude and the deepest reverence, the sacrosanct rights arising out of marriage, in no wise to countenance concubinage, and by wise regulations to minimize the mischiefs resulting from the practically necessary evil of prostitution 73

(*c*) It is the function of the State effectively to restrain, and severely to punish, cruelty to the lower animals, as a demoralizing and cowardly abuse of power . 87

Fourth. What is the Function of the State with regard to Public Hygiene? 89

It is a mere truism to say that the State should care for the corporal soundness of its subjects. In practice its greatest difficulties in discharging that duty arise from the tyranny of faddists 89

Fifth. What is the Function of the State in the sphere of contract? 91

Certainly, to preserve and vindicate its freedom . . 91

But this freedom is not absolute; it is a freedom on conditions prescribed by the State for the maintenance of general right 91

A contract is a promise which the State recognizes as binding, and will enforce with all the power of the Courts 92

And so viewed it is a limitation of a man's freedom: it is a binding agreement for the diminution of personal liberty 92

There are many things as to which the State does not permit such freedom; well-recognized classes of

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Is Socialism, then—whether systematic or unsystematic—the consummation coming past escape upon the civilized world? Or is there any cure for the prevailing corruption of the State which will save it from such dissolution? any antidote to the irrational egalitarianism which is the essential *virus* of False Democracy? 228

Seven such remedies which have been proposed will now be briefly considered 228

First. Popular Education. Is it possible by this means to qualify the average voter for the exercise of the sovereignty which False Democracy confers upon him? 228

It is manifest that the education capable of being imparted to him by primary or other schools, cannot possibly fit him to sway the rod of empire and to determine the fate of nations. Of all the manifestations of human folly, the glorification of the educational nostrum in politics is one of the most foolish. . 230

Second. Compulsory Voting. It is proposed—in one or two countries the proposal has been acted upon—to compel voters to vote, under penalties . . 231

But there is something ridiculous in the notion of a sovereign thus enforced to exercise his sovereign functions. Moreover, liberty to vote implies liberty not to vote. The voter is the proper person to determine whether he should vote. And to compel him to do so, is a gross violation of sacred rights of conscience 231

Third. Double or Indirect Election. Some publicists have recommended a system of double election, or

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election by two stages, in the place of direct and universal suffrage 232

The theory is excellent. But the actual result of this system, wherever it has been tried, has been to convert the electors chosen under it into mere delegates. And that is entirely to nullify it, to render it an empty form, worthless in practice . 232

Fourth. Voting by Professional Categories. In this scheme the electors in each electoral district are to be classified in groups, according to their occupations, and to each group representatives, to be chosen *from among themselves*, are to be assigned, according to their numbers 234

But number, the counting of heads, remains in this scheme the point of departure, and that is its sufficient condemnation. It is based upon that spurious equality which is the very essence of False Democracy . 237

Fifth. The Referendum. This is a popular vote on laws and public questions, already discussed by the legislative body. Its home is the Swiss Republic. By it "a distinct, definite, clearly stated law" may be referred to the judgment of the numerical majority 239

Its success in Switzerland, which is pretty generally admitted, seems due to the extremely peculiar political conditions of that country where something very like equality of fact prevails among the electors. It is inapplicable to countries where, society being highly complex and artificial, such equality of fact does not prevail 240

Sixth. The Multiple Vote. This is a far more promising device for mitigating the evils of False Democracy, and Mill urged its adoption with much earnestness . 241

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His main argument in its favour has never been answered, and seems unanswerable. And the experience of Belgium shows that there is no practical difficulty in working it 241

Seventh. A Strong Upper Chamber. Multiple voting, however carefully and justly organized, would be, at the best, but a palliative for the mischiefs of False Democracy. Hence the necessity for a Second Chamber composed of elements qualifying it to oppose itself to the class interests of the majority, and to raise its voice with authority against their errors and weaknesses 243

In order to possess that authority, it should specially represent those factors in the national life which will never be adequately represented in an assembly due to the accident of popular election. This truth has been more or less recognized in the constitution of the Upper Houses in most European countries, and in the United States of America 244

A scheme for such a reform of the House of Lords as will enable it to bring to the service of the country "better qualifications for legislation than a fluent tongue and the faculty of getting elected by a constituency" 246

Is there any prospect that any remedies or palliatives for False Democracy will be adopted? Do the signs of the times point in that direction? There would seem to be such a prospect, however dim: the signs of the times do appear to be so pointing . . 254

To determine great public issues by counting heads is as demonstrably absurd as to determine them by

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measuring stomachs. But mere logic goes only a short way in such matters. "A wave of opinion, reaching a certain height, cannot be stopped by evidence, but has gradually to spend itself" . . 257

We must trust, however, that, in time, public opinion will recognize organic unity as better than atomistic uniformity: the force of reason as superior to the force of numbers 257

We may not believe that our race, of which reason is the most distinctive attribute, will permanently recede from rational principles in politics . . . 258

CHAPTER VII.

THE SANCTIONS OF THE STATE.

The thought which ended the last Chapter may serve to begin this. It is, indeed, the keynote of the present volume. Reason, manifesting itself in ethics, is the right rule of human action, public or private. And law, which is a function of Reason, is the very soul of a body politic 259

But a law implies a sanction. That is a necessary part of it, distinguishing it from a mere counsel. What are the sanctions of "laws politic ordained for external order or regiment among men"? Or, to put it more shortly, What are the Sanctions of the State? That is the topic of this Chapter 260

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The first sanction of the State is in the individual conscience. We should obey "for conscience' sake." If laws are just, they have a binding force in the court conscience, in virtue of the Eternal Law from which they are derived, and in which the rational creature participates 260

But if a man will not obey for conscience' sake, there is another argument to enforce his obedience, the argument from "wrath." Law has a coercive sanction, although it is the reasoned conclusion of abstract wisdom and intelligence 260

It is this penal sanction which is almost always meant when the sanction of a law is spoken of. There cannot be a "societas sive imperio." The civil magistrate, who is clothed with the State's authority, beareth the sword, and beareth it not in vain. He is "a revenger, to execute wrath against him that doeth evil" 261

We will proceed to consider this penal sanction of the State, inquiring first, what is the true conception of crime, and next, what is the true rationale of punishment 262

The conception of a crime, universally prevailing in the world until quite lately, was an act threatened by the law with punishment: of a criminal, one who wilfully commits such act, and who, therefore, rightly incurs the punishment. The primordial principle upon which the penal legislation of the civilized world has hitherto rested is that crime has its root in volition; that a man can be held criminally responsible for a nefarious deed only when he is at liberty to do or to abstain from it . . . 262

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But a school has arisen which insists that this first principle of penal legislation, so universally accepted, is wrong; which, in the name of "science," offers us an entirely new conception of crime, and proposes an entirely new method of dealing with criminals. Its pretensions may be worth examining . . . 263

We are told by this school that we are to study crime scientifically; and a new science, or what purports to be such, has been invented for that end, and christened "criminology" or "criminal anthropology" 263

In this new "science," crime is regarded as merely the result of social and biological factors, and the criminal as abnormal—that is, as a psycopath, a moral invalid: the victim of a mind diseased, of an organization malformed, impoverished, or incomplete, whereby he is unfitted for self-adaptation to social life; and the common idea, "No crime without moral responsibility," is rejected as unscientific 264

Crime, indeed, in the proper sense, does not exist for the doctors of criminal anthropology. And with the notion of crime, the notion of punishment also disappears. There are only two valid reasons, we are told, why a psycopath should be repressed: namely, the protection of society, and the cure of his defective adaptability to the social environment 265

Such are the theoretical positions of the new "science." In its practical application it essays the study of criminals by a close and detailed observation of their physiology 266

And what is called their "reformation," by raising the standard of comfort in their minds, and convincing them that it will be to their advantage not to break

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the law, or, at all events, not to be found out in breaking it 268

But its method for studying criminals is absolutely useless. No science can possibly underlie, or issue, from such a farrago of observations as that which it presents to us 271

While its reformatory method is mere sickly sentimentality, and even if judged by the standard of the criminal anthropologists themselves, must be pronounced a ghastly failure 271

The new school of criminal anthropologists is, in fact, chiefly of account as a manifestation of the tendency, so observable everywhere and in every department of human thought and action, to bring everything within the boundaries of physical science: to subject everything to the laws of matter 274

One of the most favourite accusations brought by differing criminal anthropologists against one another, is that of talking metaphysics. It seems to be assumed by them as certain, whatever else may be doubtful, that metaphysics have no right to exist . . 274

But the whole subject of crime, scientifically considered, falls under the domain of moral philosophy, and moral philosophy is based upon metaphysics, and can have no other basis 274

Moral philosophy treats *de actibus humanis*, of acts properly called *human;* that is, acts which are voluntary as proceeding from a man's will, with a knowledge of the end to which they tend, and free as so proceeding that under the same antecedent conditions they might or might not have proceeded. And the criterion whereby it judges of such acts is their

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conformity with, or opposition to, man's rational nature. Those which conform with that nature are morally good; those which oppose it are morally bad 274

It is man's prerogative, as "man and master of his fate," to choose between them. For that choice he is morally responsible. We praise or blame him—and the oracle within his own breast confirms the exterior judgment—according as his choice is rightly or wrongly made. Of such praise and blame an ethical element is the essence. This is the common teaching of the great masters of morals in all ages, and is the true and only foundation of moral science . . 275

What is meant by freedom of volition is the power of acting from a motive intelligible to, and chosen by, a self-conscious being, in virtue of the property of his will to be a law unto itself; "a faculty of choosing that which reason independently of natural inclination declares to be practically necessary, or good." And in treating *de actibus humanis* different kinds of freedom are distinguished. A deed may be free, and therefore deliberate, *actu*, *habitu*, *virtute*, or *interpretative* 277

It may be fully allowed that every man, during by far the greater part of his life, is solicited by conflicting attractions, and that, in the very large majority of such instances, a certain definite and decisive impulse of the will spontaneously ensues; but it does not in the least follow from this, as Determinists maintain, that the term "will" really signifies no more than a certain amount of reflex action, accompanied by a certain degree of sensation 278

A scientific Determinism is not in the least incompatible with a rational doctrine of free will. Determinism

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is the postulate of the physical and physiological sciences. Liberty of volition—a relative liberty, of course—is, as certainly, the postulate of the psychological and moral sciences 286

No doubt the power of volition varies indefinitely. There are malefactors in whom it is practically inoperative; and these are the proper subjects, not of punishment, but of seclusion from human society, as unable to exercise the distinctive faculty which qualifies them for taking part in it . . . 286

No doubt, too, the view of criminality taken by the existing penal legislation of the civilized world is substantially correct, although some of its authoritative expositions may be lacking in scientific precision . 286

As such must be accounted the dictum that the true test of criminality is knowledge. This is not so. It is not enough that the perpetrator of the noxious deed should have known what he was doing, and should have known, moreover, that it was wrong and against the law. To make a man really culpable there must be the *mens rea*, the criminous intention. And "intention" means "the free tendency of the will towards some end through some means" . 287

Maladies of the will are facts. But they are facts peculiarly difficult to establish. And the evidence of specialists, by which it is usually sought to establish them, should be accepted with great reserve . . 288

We must say, then, that only wrongful acts intentionally done, can be accounted crimes. Such is the right account of culpability. We go on to the next point, to inquire: What is the true *rationale* of punishment? 289

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The criminal law is unquestionably designed for the protection of society and the prevention of further crime. But is this the whole account of it? Is it only a regulation of police? That is a very inadequate conception of it, perverting it in its theory, robbing it of its dignity in the life of men, and emptying it of its vivifying idea 289

The proper conception of punishment is that it is the correlative of culpability. Legal justice is but one aspect of general justice, which is "the constant and perpetual will to render to every one his due." Crime is the forcible negation of right, the violent disturbance of the rational order of society. And punishment—"the other half of crime"—is something due to the reasonable part of the criminal . 290

There is in our nature a deep-rooted instinct which testifies to the connection between punishment and crime, and desires retribution. Like all instincts, it has to be brought under the control and discipline of reason. And when so controlled and disciplined, it becomes criminal justice 290

Punishment, then, must be just; it must be rightly proportioned to the offence, so that "the punished person, when he looks thereon, must himself confess that right is done to him, and that his lot is entirely commensurate with his conduct" 293

But what is the proper measure of penality? How graduate it to crime? The question is one of exceeding difficulty, and can be only approximately solved by us. But the underlying principle of a just sentence is the *lex talionis*, in virtue of which his wrongful deed is returned on the offender 293

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The crude jurisprudence of primitive ages applied the principle literally. In our deeper apprehension of the sacredness of human personality we reject this severity as barbarous. Again, circumstances are not irrelevant in the judgment which right reason pronounces on each misdeed. Moreover, thanks to the growth of a milder and more rational spirit in penality, behind the delict we now see the delinquent: still, in all his degradation and dishonour, a *person*, with claims upon, and rights against society 293

But, however softened the application of the rule of retaliation, by it, and by it alone, are the true kind and measure of punishment indicated. Offences involving cruelty merit the infliction of sharp bodily pain. Crimes merely against property, rightly subject the wrong-doer to the deprivation of ease and enjoyment. For the supreme crime of wilful murder, nature herself exactly prescribes the just chastisement—death 295

The first function, then, of punishment is to punish, to dissolve that *vinculum juris* to which crime gives rise, by meting out to the transgressor his due. Its second function is to deter the offender from repeating his offence, and others from imitating it . . 297

Nor is it any real hardship to the punished person that his example should be made of general utility. We are members one of another, knit together by a necessity arising out of the nature of things, which is rational, in the social organism whose law is reason. And a man who will not obey that law, but abandons himself to mere animal impulse, divests himself, so far as in him lies, of his dignity as a *person:* and

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may be used like an animal, not as an end to himself, but as an instrument for benefiting others . . 299

But there is a third end of punishment. It is, first, vindictive, and, secondly, deterrent. It should also be, if possible, reformatory. To deter a criminal from further crime is not, necessarily, to reform him. Reformation means deterrence *from a moral motive:* the conversion of the will from bad to good. Is it reasonable to expect this from punishment? . . 300

It seems eminently reasonable to expect it from the supreme punishment—the punishment of death. Experience amply proves that the most hopeful means of working the reformation of a murderer—the conversion of his will from bad to good—is supplied by the certainty of his impending execution 301

So, too, the experience of physical pain by those who have barbarously inflicted it, whether on men or animals, for the gratification of lawless passions, affords the best chance of enabling them to realize the hideousness of cruelty, and of awaking them to new spiritual life 302

Concerning imprisonment as a reformatory agency, we must speak much less hopefully. A gaol is ill adapted for the purposes of an ethical seminary. Prison life, with its manifold degradation, seems fitted rather to quench all sense of personality, and so to destroy the very foundation upon which character must be built up 302

In fact, the spurious humanitarianism of the present day, by looking too exclusively to the reformatory side of punishment, has actually increased the criminal

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class. It appears that eighty per cent. of those who have been in prison commit crime again . . 303

One reason for this gigantic failure is that many social reformers are misled by a false view of human nature. It is *not* good: and the evil in the world is *not* exclusively, or even principally, the result of bad education and bad institutions . . . 303

The ultimate source of the evil of the world is far deeper than defective social mechanism. There is innate in every human being a propensity which renders him prone to evil and averse from good. It is a primordial permanent ingredient of human nature; a taint transmitted by heredity 304

It is this taint which vitiates the will, and that vitiation breeds evil deeds. Every real reform must rest upon the cure of the vitiated volition; its motive-power must be something which acts directly and powerfully upon the will. Where shall we find such an agent? 305

In good education, we are often told. But education is a question-begging word. If mere intellectual instruction is meant by it—as is generally the case—experience is conclusive that such instruction is not in itself moralizing. Mere knowledge does not convert the will from bad to good . . . 305

Experience confirms the assertion that, taking mankind as a whole, the effectual reform of human nature can be achieved only by an agent above nature . . 306

No doubt the human reason, rightly exercised, is adequate to the deduction of moral rules which shall indicate the limits of right action. But for the vast

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multitude of men, the only effective teacher of morality is religion, which works upon volition by touching the heart. This is pre-eminently true of the criminal classes with their domineering passions and debilitated wills 307

Again. A great obstacle to the reformation of criminals arises from forgetting that there are two distinct kinds of offenders, requiring very different treatment: occasional offenders and habitual offenders. Between these classes we should discriminate . . . 307

The punishment of a first transgression should be short and sharp; and that for two reasons: a brief term of imprisonment often induces reflection, remorse, and resolutions to amend; whereas a long one almost always hardens the novice in crime, who, moreover, when it has expired, finds his home broken up and his friends forgetful of him—serious obstacles to his return to the path of rectitude . . . 308

A third conviction at the assizes, or at quarter sessions, should stamp a man as a habitual criminal, who, for the rest of his life, should forfeit his personal liberty, and be reduced to a state of industrial serfdom . 308

Nor would there be any real hardship in this to habitual criminals. On the contrary, it would be a positive benefit to them. If they reform at all, they reform while under penal restraint. When left to themselves, they, almost invariably, fall away . . 308

Moreover, the perpetual seclusion of habitual offenders is justly due to the community 309

So much as to the true principles of penality. But there is still something to be said regarding the criminal.

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We cannot consider him as an isolated being apart from the society in which he is found. Its responsibility for crime is as grave a question as his . 310

That huge menacing fact of the criminal classes may well send us to an examination of conscience. The number of the *residuum* of habitual offenders and vicious loafers in London alone is estimated at nearly one hundred thousand 311

What has caused this *residuum*? The answer must be, to a large extent, poverty. But what is the cause of poverty? No doubt in many cases vice, of which it is the proper punishment; but, assuredly, in many more, injustice 312

The criminal classes are largely the outcome of English pauperism. Now, certain it is that the era of English pauperism began with the plunder, three centuries ago, of the religious houses, and of the religious guilds. No less certain is it that the vast growth of pauperism in these latter days is largely due to the iniquitous individualism which has withheld from the labourer his fair share of the fruits of his labour . 312

The labourer has sunk into a pauper: the pauper into a vagrant, a loafer, a confirmed offender; and the class of habitual criminals has been formed as an element of modern society. And these degraded beings increase and multiply, giving the world a more vitiated progeny: children born with special predispositions for crime 312

What, then, are the remedies? They would seem to be chiefly three. First, a transformation of the existing order of rights in the interest of the suffering working

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classes. Secondly, the addiction of adult habitual offenders to industrial servitude. Thirdly, the modification—to a great extent, the eradication—of the terrible tendencies transmitted by them to their offspring through a system of ethical discipline, of training of the will, which alone is education in the true sense 313

The poor in virtue, as in this world's goods, we have always with us. But only in a society which has lost, or largely forgotten, "the mighty hopes that make us men," does poverty degenerate into pauperism, and vice grow rankly into crime 314

Without those hopes—our special heritage among the tribes of animate existence—to lift us above the self of the appetites and the passions, we do not rise to the true level of human life, whether individually or collectively 314

This is not, indeed, a first principle in politics. But it is a first principle underlying all politics. The known and natural do not suffice for human society. It requires ideals which point to a life beyond the phenomenal, where justice shall at length triumph, where its rewards and penalties shall be adequately realized: and which witness to a Supreme Moral Governor who shall bring about that triumph and realization 314

That is the direct teaching of the parable of Dives and Lazarus. On that teaching the poor lived throughout those ages which, whatever else they were or were not, most assuredly were "ages of faith" . . 314

Such was the contribution of Christianity to "the social problem." No doubt that teaching has been perverted

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to an argument for retaining the masses in material and economical degradation. But the abuse of a truth does not vitiate its proper use. Can the social question be rationally handled without the belief in the Divine Law of Righteousness expressed in the doctrine of Christ concerning poverty and riches? 316

Fragments of this work, which have appeared from time to time in the Quarterly, Fortnightly, Contemporary, *and* New Reviews, *and in the* Nineteenth Century, *now find their proper place in these pages, by the courtesy of the respective proprietors of those Magazines.*

FIRST PRINCIPLES IN POLITICS.

CHAPTER I.

THE FOUNDATION OF THE STATE.

A STRIKING characteristic of the present day is the well-nigh total effacement, from the general mind, of the idea of law. This statement will, perhaps, seem paradoxical to many of my readers. "Why," it may be objected, "there never was a time when law was more talked of; every school-boy, every school-girl babbles of it: you cannot take up a newspaper without finding some mention of laws of conduct, laws of political economy, laws of nature, laws of all kinds." True; but these so-called laws are, for the most part, not laws at all, for they do not possess that character of necessity which is of the essence of law. What are commonly presented to us as laws of conduct, are mere corollaries to what are designated laws of comfort. They are, as a writer much in vogue tells us, "generalizations from experiences of utility."

But experiences of utility, however multiplied, cannot do more than counsel. They can lay no necessity upon us to fulfil what they indicate as desirable. They are devoid of that categorical imperative indicated by the word "ought," which is the very note of an ethical law. Again, the so-called laws of political economy are usually statements, more or less probable, of the course likely to be adopted by free agents in pursuit of their own advantage; and such statements are not laws in the proper sense of the word. Once more. If we keep strictly within the domain of experimental science, we have no right to speak of laws. The notion which we express by the word "must" has no place in pure physics; its place is taken by the word "is." The mere physicist cannot get beyond ascertained sequences and co-ordinations of phenomena. What he calls "laws" are formulas; hypotheses which have won their way into general credit by explaining all the facts known to us, by satisfying every test applied to them. I am far from denying—I strenuously affirm—that there is a sense in which necessity may be predicated of physical laws. But for that sense—nay, for the very notion of necessity—we must quit the proper bounds of physical science: we must go to an order of verities transcending the physical, to what Aristotle called *τὰ μετὰ τὰ φυσικὰ*—to metaphysics; that is to say, to super-sensuous realities; to the world lying beyond the

visible and tangible universe. Only those laws are absolutely or metaphysically necessary which are stamped upon all that is, and therefore upon the human intellect; which are the very conditions of thought, because they are the conditions under which all things, all beings, even the Being of Beings, the Absolute and Eternal Himself, exist. I need not pursue that topic further. I have said enough in elucidation of my present point, which is this: that every physical truth is necessarily connected with, or rather taken for granted, some metaphysical principle. "That which doth assign unto each thing the kind, that which doth moderate the force and power, that which doth appoint the form and measure of working, the same we term a *Law*," * says Hooker, summing up, in his judicious way, the Aristotelian and Scholastic teaching on the matter. Note the words "assign," "moderate," "appoint." Law is of the will and of the intellect; and the will and the intellect are not the proper objects of physical science.

I beg of my readers not to suppose that in insisting so strongly upon this matter I am indulging in mere logomachy; in unprofitable strife about words. The question is concerning the true idea of law—an idea of the utmost practical

* *Ecclesiastical Polity*, book i. 2.

importance. The doctrine that the universe is governed in all things by law, "the very least as feeling her care, and the greatest as not exempted from her power," is no mere abstract speculation which men may hold or reject, and be none the better or the worse for holding or rejecting it. No: it is a doctrine fraught with the most momentous consequences in all relations of human life. Law is not something arbitrary, the edict of mere will: it is, in the admirable words of Aquinas, "a function of reason." Lose the true idea of law, and you derationalize the universe. You reduce the wondrous All to mere senseless mechanism. You undo the work of the creative Logos. You enthrone Anarchy in its place.

These are not the words of rhetorical declamation. They are the words of truth and soberness. And if we seek an illustration of them, we have but to look around. For what—if I may use the German word, now indeed, naturalized among us—what is the *Zeitgeist* of the age in which we live? I suppose the first thing that strikes any thoughtful person, conversant with contemporary speculation as exhibited in current literature, is the perfect babel of opinions to which expression is given. All men who can write grammatically—and many, indeed, who cannot—seem to think they have a call to express their "views" on all subjects, human and divine. And their views will be found, in the vast majority of cases, to consist

of shreds of information, generally distorted and often erroneous, claptrap phrases, picked up at hazard, and dignified by the title of "principles," preferences and predilections, always unreasoned, and not seldom unreasonable. But if we shut our ears to the "hideous hum" of these crude imaginings which fill the newspapers "with voice deceiving," and give heed only to the utterances of those who possess some intelligible claim to be our intellectual guides, what do we usually find? We find exactly the same anarchy of thought. In those sciences, indeed, where we have to deal with phenomena verifiable by sensible experience, order reigns. And there is something majestic in the calm with which they declare, "That is so." But in every region of intellectual activity outside their domain, the minds of men are "clouded with a doubt." It is a doubt which extends to all first principles of thought and action. The temper of the times is anarchical in the proper sense of the word. That is the true account of the *Zeitgeist*. Nor can we doubt that it arises, in great degree, from the intense devotion of the age to physical science—a devotion so astonishingly fruitful in the development of material civilization—and from the use of its methods in departments where they can produce only a negative result, or no result at all. Certitude is naturally intolerant. In the age of faith, theology supplied ample evidence of this truth. In our age

of unfaith, physical science supplies as ample. There has arisen among us a dogmatism of physicists, not less oppressive than the old dogmatism of divines. There has been a tendency, and more than a tendency, to assert that outside the boundaries of physical science we can know nothing, that its methods are the only methods of arriving at truth: a tendency to restrict our ideas to generalizations of phenomena; to treat mental and moral problems as mere questions of physiology;—in a word, to regard what are called the laws of matter as the sole laws. And the effacement of the true idea of law is directly traceable to the claim made for physical science as the one criterion of reality—a claim made in ignorance or forgetfulness of the unquestionable fact that its foundations are laid in the supersensuous; that its greatest generalizations are nothing else than the application of primordial ideas of the intellect as psychology reveals them in consciousness.

Such, beyond doubt, is the tendency of the age. And nowhere is it more strikingly exemplified than in the domain of politics. Some time ago I mentioned to an accomplished friend that I had it in intention to write the book upon which I am now engaged, as a sort of sketch of, or introduction to, the laws of human society. He replied, "My dear fellow, you imagine a vain thing. There are no first principles in politics or last

principles; there are no principles at all, and no laws giving expression to principles: it is a mere matter of expediency, of utility, of convention, of self-interest." The voice of the *Zeitgeist* spoke through the mouth of my accomplished friend. And, indeed, the literature of the age teems with evidence how widely the view which he expressed is held. In 1858 Lord Salisbury, then at the beginning of his public career, noted the significant fact that in English politics "no one acts on principles or reasons from them." * This is even truer now than it was then. And it is true of other countries than our own. Writing recently in the *Revue des Deux Mondes*, M. Leroy-Beaulieu declared—and no one ventured to gainsay him—that in France, and the Latin races generally, "contemporary politicians of all classes, from municipal counsellors to Ministers, taken on the whole, and with few exceptions, are the vilest and the narrowest of sycophants and courtiers that humanity has ever known; their sole end basely to flatter and develop all popular prejudices, which, for the rest, they but vaguely share, never having consecrated one minute of their lives to reflection and observation." So in the United States of America, Mr. Bryce tells us, "neither party has any principles, or any distinctive tenets; . . . tenets and policies, points of political doctrine, and points of political practice, have all

* In a remarkable article in *Oxford Essays*, 1858.

vanished: all has been lost except office and the hope of it." * I need not enlarge upon a state of things which must be familiar to my readers, and the exact description of which is anarchy or lawlessness.

Now, I have been led to write this book by the deep conviction that "nothing is that errs from law"—law issuing from the nature of things which is rational; law, the first fact in the universe, though invisible, inpalpable, imponderable: most real, indeed, because most spiritual. I hold that law rules in the province of politics, as in every other segment of human life; and that to interpret the law, and to bring it into harmony with the varying conditions of human society, is the highest task of the legislator. Properly speaking, politics —the word is here used in its old and only worthy sense, not in its modern acceptation of vote-catching—must be considered a branch of ethics. And by ethics, it may be not unnecessary to add, I mean the science of natural morality indicating what action is right, and what is wrong, as befitting or unbefitting a rational creature. Politics form a chapter, not in physics, but in the Philosophy of Right, by Right being understood, as Krause has admirably defined it, "the organic

* *The American Commonwealth*, vol. ii. p. 344.

whole of the outward conditions of a life according to Reason." *

The question before us, in this initial Chapter, is, What is the Foundation of the State? Not, I beg my readers to note, what is the actual genesis of any state in particular, but on what deep underlying principle human society must rest. I start, then, with the position that the foundation of the State is the law of man's moral nature, in virtue of which he is a *person* invested with rights and encompassed by duties. The natural rights of man and the natural duties of man, I say, are the necessary postulates of political science. Let me not be misunderstood. I am very far indeed from holding, with the sophists of the French Revolution, that these natural rights and duties are independent of conditioning circumstances; that they have the empirical determinativeness or the binding force of positive law; that they can be translated off-hand into fact. I am merely asserting, to quote the words of Green, that "there is a system of rights and obligations which *should* be maintained by law, whether it is so or not, and which may properly be called natural," † as issuing from the nature of things. From the very first dawn of philosophy the conception has prevailed of an absolute order of right, embracing

* "Das organische Ganze der aüsseren Bedingungen des Vernunftlebens." Quoted by Green, *Works*, vol. ii. p. 341.

† *Works*, vol. ii. p. 339.

and harmonizing all private rights. It is, metaphysically considered, the ultimate foundation of all human justice, and conformity thereto is the criterion of the moral and rational validity of positive law. It is binding upon the conscience of the individual as such, for it is, in Butler's phrase, that "law of virtue under which we are born." It is binding upon the conscience of the State, as such, for "the value of the institutions of civil life," Green well observes, "lies in their operation as giving reality to the capacities of will and reason," the possession of which is "the condition of a moral life." * And the ideals of right which constitute it are the fundamental principles determinative of the proper construction of a polity. Now of these ideals, the ideal of justice is the first, and embraces, in some sort, all the others. Hence the dictum, "Justitia fundamentum regni." Yes: justice is the true foundation of the State. On justice, assuredly, every commonwealth must be based if it is to endure. Build on any other

* *Works*, vol. ii. p. 337, 338. Of course, some eminent writers on political science deny to the *jus naturæ* the name of law (*Recht*) which they restrict to positive law. But they admit the thing, though they reject the name. Thus Lasson, who will not hear of *Naturrecht*, substitutes for it *das Gerechte*, which, he says, "is deduced from universal nature, from the pure expression of reason, and from the historical process. The *Gerechte*," he adds, "forms the ideal standard (*Anforderung*) of *Recht*, a standard to which it never fully attains" (*System der Rechtsphilosophie*, p. 231). But that is precisely the true account of τὸ δίκαιον, *jus naturæ*, or *Naturrecht*.

foundation than that adamantine rock, and your political edifice, however imposing with "cloud-capped towers and gorgeous palaces," will pass away like "an insubstantial pageant." When the rain descends, and the floods come, and the winds blow and beat upon it, fall it must. And great will be the fall of it.

CHAPTER II.

THE ORIGIN OF THE STATE.

At the basis, then, of politics lies the question, What is just? Political philosophy, as I just now insisted, is a chapter in the Philosophy of Right, and in it we may proceed either by synthesis or by analysis. We may take certain rights, and investigate their ethical source and their primary principles. But we cannot deduce from a principle alone—even if it be a true principle—its varying applications and ramifications, in the varying conditions and needs of human society. In politics both the *a priori* and the *a posteriori* methods are equally valid and equally valuable. Neither is sufficient by itself. History teaches us the *how*, metaphysics the *why*. To know anything scientifically, we must know it in its development; in the process by which it has become what it is. But that is not enough; we must know it also in its cause. The *a priori* method has never been popular in England. And the absurdities and atrocities of the Jacobin disciples of Rousseau, in the last century, not unnaturally overwhelmed it with discredit. The

mistake of the legislators of the French Revolution did not, however, lie in their belief that there are first principles in politics. It lay in their gross misapprehension of those principles, and in their fond conceit that what would suit the phantoms of their ratiocination—all alike, equal, independent, and entering for the first time into a social contract—would also suit the beings of flesh and blood, so widely differing in character, capacity, and condition, who inhabited eighteenth-century France. I do not know who has written more wisely on this subject than Taine. And it may be worth while here to translate a page which he has devoted to it, although in an English version small justice can be done to the vigour and picturesqueness of the original.

"When a statesman who is not altogether unworthy of that great name comes upon an abstract principle—such, for example, as that of the sovereignty of the people—he admits it, if at all, like every other principle, with the necessary qualifications (*sous bénéfice d'inventaire*). For that end he begins by picturing it to himself as applied and working in the world. And so, uniting all his own recollections and all the information he can get together, he imagines some particular village or borough or small town, in the north, or in the south, or in the midlands of the country for which he legislates. Then, to the best of his ability, he represents to himself the people engaged in acting upon his principle—that is to say, voting, mounting guard, collecting their taxes, and carrying on their business. From these ten or twelve groups with which he is familiar, and which he takes as specimens, he draws conclusions by analogy regarding the rest and the whole country. Clearly it is a difficult and risky operation. In order to be approximately

exact, it needs rare talent for observation, and at every step exquisite tact; for the problem is to work out correct results from quantities imperfectly collected and imperfectly noted. And when a politician succeeds in this, it is through a delicate divination which is the fruit of consummate experience united to genius. Moreover, he proceeds in his innovation or reform with caution; almost always he makes preliminary trial of it; he applies his law only by instalments, gradually, provisionally. He is always ready to correct, to suspend, to thin out his work, according to the good or bad success of his tentative application of it; and the condition of the human material which he has to handle is apprehended by him, however superior his intellect may be, only after much manipulation. Just the opposite is it with the Jacobin. His "principle" is an axiom of political geometry, which is self-evident; for, like the axioms of ordinary geometry, it is formed by the combination of certain ideas, and its evidence compels the immediate assent of every mind which entertains together the two terms of which it is the sum. Man in general, the rights of man, the social contract, liberty, equality, reason, nature, the people, tyrants,—such are the elementary notions. Precise or not, they fill the brain of the new sectary. Frequently they are there only as grandiose and vague words. But that does not matter. As soon as they are congregated in his mind, they become for him an axiom, which he applies presently in its entirety upon every occasion and to all lengths. As to real men, he is not in the least concerned about them. He does not see them. He has no wish to see them. With eyes shut, he casts in his own mould the human material which he handles. Never does it occur to him to picture to himself beforehand that manifold, shifting, and complex material of peasants, artisans, townspeople, clergy, nobles, as actual life presents them, at their plough, in their lodging, in their place of business, in their presbytery, in their town-house, with their inveterate beliefs, their masterful inclinations, their real wills. Nothing of all this can enter, or find a place in, his mind. The avenues are blocked by the abstract principle which puffs itself out and monopolizes all the room. If, by the channel of eyes or ears, actual experience drives in by force any inconvenient truth, it cannot find a home

there. Crying and bleeding though it be, he drives it away. Nay, if need be, he will take it by the throat and strangle it, as a slanderer, because it gives the lie to a principle sacred from discussion and true in itself. Surely such a mind is not sound. Of the two faculties which ought to pull equally and together, one is smitten with atrophy, the other with hypertrophy. The counterpoise of facts is not there to balance the weight of formulas. Overloaded on the one hand and empty on the other, the intellect is upset with violence in the direction to which it leans. And this is the incurable infirmity of the Jacobin mind.*

The topic before us in the present Chapter is the Origin of the State. First, let us inquire what history has to tell us concerning it. The origin of *humanity* is a subject upon which we need not enter. Nor is the prehistoric condition of our globe a matter which need detain us. For speculations upon the long career of evolution from Protozoa to Man, I may refer my reader to a great multitude of capable and copious writers, whose names are in every one's mouth: speeding him on his way with Mr. Herbert Spencer's confident assurance that "he will find no difficulty in understanding how, under appropriate conditions, a cell may have given origin to the human race." Whether the race made its original appearance in one region only of the now cooled

* *La Conquête Jacobine*, p. 18.

and solid earth, or arose under varying conditions in different countries and at different geological periods, is also a problem which has much exercised ingenious minds, and which—to borrow a phrase from Butler—has "with equal rashness, I fear, been determined contrary ways." We are bidden by *savants* of the greatest authority, or, at all events, of the greatest authoritativeness, to recognize in the negro the primitive type of human kind: not the negro familiar to most of us, with some varnish of the civilization of higher races forced upon him, but the negro of whom the Takroor Nigritians are now the nearest representatives—a creature in his low intellectual faculties, brute instincts, and physical conformation, approaching very nearly to the mammalian animal. His history is, however, a blank. No monuments, material or mental, witness to him. So that, for our present purpose, we may relegate him to the realm of conjecture, as a mere brutal phantasm, and not *man* at all. Man, as we meet with him in history—historic man, we may say—possesses exactly the same distinctive characteristics in the earliest annals of our race and in the latest; and one of them is, as Aristotle tells us, that he is "a political animal"—a being living in civil society. Professor Max Müller is absolutely well warranted when he writes, "If [savage] means people without a settled form of government, without laws, and without a religion,

then, go where you like, you will not find such a race." *

So much is certain. Equally certain is it that the polity which earliest history reveals to us is monarchical. Monarchy is, in fact, the one form of government to which the term "natural" may properly be applied. I need hardly observe how utterly unhistorical is the conception of primitive society so widely popularized through the influence of Rousseau. Not a community of men and citizens all sovereign and equal, but autocracy, is the earliest form of the State known to us. Of civil society the family is the germ. The authority of the father, king over his own children, is, as a mere matter of historical fact, the earliest form of the *jus imperandi*. And the patriarchal state is everywhere the primitive polity. The archaic king, or autocratic chieftain, is, if I may so express it, the artificially extended father. The regal power is but the paternal power in a wider sphere. Most people who have passed through a public school or a university understand, more or less clearly, how far-reaching this *patria potestas* was in ancient Rome. It reached even farther in ancient India, where we find the father as the rajah or absolute sovereign of the family that depends upon him. In the expansion of the patriarchal family to the tribe, to the primitive nation, the attributes of the father remained

* *Nineteenth Century*, January, 1885, p. 114.

unchanged. His word is still law; and, what is significant, as Sir Henry Maine points out, "his sentences, or θέμιστες, which is the same word with our Teutonic word dooms, [though] doubtless drawn from pre-existing custom or usage," are supposed to "come directly into his mind by divine dictation from on high, to be conceived by him spontaneously or through divine prompting."* It is in connection with the personage whom we call the king that law, civil or criminal, enforced by penalties to be inflicted in this world, first makes its appearance in the Hindu Sacred Books.† The archaic king is the supreme judge and legislator, as well as the supreme general, and is invested also with a distinctly religious character. It is interesting to observe how these attributes of kingship, in its earliest form, even now attach, in theory, to its latest development. The Queen is still the source of legislation: statutes are enacted by Her Most Excellent Majesty. The judges of the High Court are her judges, and derive their authority from her commission. She is the head of the Army and Navy: we speak of the troops as Her Majesty's troops, of the fleet as Her Majesty's fleet. She is, in virtue of her ecclesiastical supremacy, the ultimate arbiter in causes, whether of faith or morals, within the National Church; and her decisions

* *Dissertations on Early Law and Custom*, p. 163.

† *Ibid.* p. 38.

of them, given upon the advice of her Privy Council, are irreformable. I merely note this point in passing. I go on to remark that the whole history of the progressive races of the world is a moving away, ever farther and farther, from the patriarchal state. The unit of archaic society is not the man, but the family. The individual, as we conceive of him, has been slowly developed during thousands of years. Human history may be not improperly regarded as the history of his evolution.

History, then, shows us the family as the origin of the State, and traces *how* it developed from that rudimentary or embryonic monarchy, into the varied and complex forms in which it now exists. And if we ask *why* it is that men live gregariously, and not in isolation, the answer is that in so doing they merely obey a law of their being. That is the true account of the families of the earth. The extra social man of whom Rousseau fabled, is not man at all. Such a being, Aristotle rightly judged, would be either a wild beast or a god. "Unus homo, nullus homo." It may be sometimes necessary, for the purposes of argument, to abstract man from the society which is his normal condition. But, as a matter of fact, he is found only in society. He is, in the Aristotelian phrase just now quoted,

"a political animal." Here, and not in the theories of contract, of force, of divine right, of utility, is the true explanation of the *why* of the State. I am far from denying that in those theories there are elements of truth. I suppose no one now believes that human society is the outcome of a social contract. Probably Rousseau himself did not believe it. Manifestly a contract presupposes the State, not the State a contract. Without the coercive power of the State, an agreement would not possess the binding force of a contract; it would be merely a nude pact. But we may say, in the language of the jurisprudents, that the obligation of obeying the laws regarding things in themselves indifferent, arises *quasi ex contractu*, or from what we may call a virtual contract. Again: no doubt force is an essential element in every regimen. But it is curious that any thoughtful person should have found in it the sufficient explanation of government. Every polity, however rude, requires the ideas of right, and of law for the maintenance of right. Might, without these ideas, would not give rise to a commonwealth, but to a gang of robbers; to anarchy plus the sword. Once more. Utility is, doubtless, a conspicuous note of civil polity. For civil polity is an instrument of incalculable good to the human race. It is a condition and a means of man's progress, both material and ethical. This is the sufficient justification of the State. But it is no

more than that. And the authors of the American *Declaration of Independence* greatly erred when they pronounced it "self-evident" that "Governments are *instituted* among men to secure certain inalienable rights." That is the effect of governments, doubtless. It is not the reason which causally determined their institution. Lastly: there is a sense in which divine right may be truly predicated of the State: not the absurd sense admirably ridiculed by Pope, of "the right divine of kings to govern wrong," whether the king be a single or a multitudinous despot; but this, that civil society is natural to man, and so may, and must, be regarded by all theists as instituted by the Author of Nature. And now let us look more closely at the matter.

Man is by no means the only animal that lives in community. Not to multiply instances, bees and ants display an instinct analogous to that which gives rise to human commonwealths. What is the essential difference between human society and animal society? To answer that question we must ask another: What is the essential difference between men and animals? It is a question of psychology, of what is called—I know not whether very happily—comparative psychology. The lower animals unquestionably exhibit many of man's pyschical powers. As unquestionably, they are deficient in others. They have a kind of self-consciousness, a kind of volition, a

certain feeling of causation, and of the adaptation of means to ends; they are endowed with appetites, desires, emotions; they can form mental images, or phantasmata, and can associate them. But all these things belong to the sensitive faculty. Can we, without absurdity, ascribe to them acts of our intellectual faculty? The ancients explained intellect as *intus legens*; and the explanation undoubtedly indicates a great truth, whatever we may think of the etymology. Consider for a moment what human knowledge really implies. And here I may be permitted to repeat words which I have written elsewhere, as I do not know how to better them, though, for my present purpose, I shall a little compress them.

"The images presented to our intellect by the eye, the ear, the touch—Aristotle and the schoolmen after him called them phantasmata—are the *direct* results of sensuous experience. But knowledge means something more than that. We may go on—we do go on—to the reflex act of subjecting those phantasmata to the judging faculty. Passive sensation does not constitute knowledge, in the true sense. The instrument of knowledge is thought (*quo cognoscimus*). Knowledge (*quod cognoscitur*) is what is gained by thought. There is a perception of sense which is concerned with the material, the extended, the corporeal. There is an analytical interpretation of that perception, an intellectual appropriation of it (*das Bewusstwerden*) which has to do with the immaterial, the unextended, the uncorporeal. The two are often confused. But there is no great difficulty in distinguishing them. Let us picture to ourselves the intellect at its actual contact with the presentments of sense. I take into my hand a stone. I am directly conscious of it as an otherness, a non-self. Feeling proper (sensation) reveals to me so much. And I proceed

—this is the next step—to interpret the sensation intellectually, to *cognize* the stone as hard and heavy. Thus does the thinking subject respond to the stimulating object, and convert the feeling into a felt thing. Here is something more than sensation; here is an interior expression of sensation formulated in words; here is intellection. Surely, so much is clear. But we may advance yet a step further. From the cognition of the stone as hard and heavy, we may, by comparison and abstraction, advance to the general concepts of hardness and weight. These are the three steps in our knowledge which Kant distinguishes as Experience, Understanding, Reason, and which, under whatever names, are commonly admitted by metaphysicians." *

Now, the lower animals have in common with us this Experience—sensuous experience—of which Kant speaks. We must also attribute to them a power of associating their experience by an exercise of memory and of expectant imagination—*facultas æstimativa* the Schoolmen called it—which undoubtedly presents some analogy with Understanding. But it is not Understanding, for they do not possess that *μνῆμη συνθετικῆ*, that synthetic memory, of which we make such vast use: it is sensuous reflection proceeding by way of sensuous inference. They do not attain to intellection. They stop short at feeling. Still farther are they removed from the apprehension of general concepts, abstract ideas, universals. And such apprehension is the essential characteristic of Reason, the distinctive faculty of man, in virtue of which he is a *person*, according to the excellent definition of the

* *The Great Enigma*, p. 141.

Schoolmen: "naturæ rationalis individua substantia."

Whether our race has always *exercised* that faculty of reason is a question unnecessary to be discussed here. Kant apparently thought that it had not. Anticipating in this, as in other instances, the conclusions of certain modern physicists, Kant held that "man was not always an *animal rationale*, but was once merely an *animal rationabile*," possessing the germ whence reason developed; and that "he became rational only through his own exertions," * extending, I suppose, over vast periods of pre-historic time. However that may be, certain it is that man, as a matter of fact, exercises this faculty of reason, and that no other animal exhibits the capacity for it. Equally certain is it that from this faculty spring those endowments which clearly mark man off from the other animals, however acute and subtle their instincts. Marvellously acute and subtle, indeed, those instincts are, as displayed, for example, in their art. But this art is unconscious or automatic. It is inconceivable that bees in constructing their hexagonal cells, possess a knowledge of angles. Equally inconceivable is it—to take another striking instance of animal action with a purpose—that

* See his curious discussion, "Vom Charakter der Gattung," in the second part of his "Anthropologie in Pragmatischer Hinsicht:" *Werke*, vol. vii. p. 261 (Rosenkranz and Schubert's ed.).

the numerous insect tribes which lay up food for their *larvæ* have before them the idea of futurity. They live under the law of instinct. Man lives under a sort of hybrid law, at once instinctive and rational. They have, as their one spring of action, impulse—sensuous impulse; ὄρεξις, Aristotle calls it, and the Schoolmen, *appetitus*. Man has impulse *and* reason: ὄρεξις μετὰ λόγου: *appetitus rationalis*: and that means will. It is from the self-control exercised by man in virtue of his endowment of rational will—the phrase is a pleonasm: reason *pace* Schopenhauer, is of the essence of will—that his activity, as a whole, is distinguished from animal activity. It is because of this endowment that we impute to him merit or demerit—words which, in their proper, or ethical sense, are inapplicable to animals. Morality is of the will. We do not hold our horses or dogs morally responsible for what they do, or leave undone; we do not praise or blame them, in the sense in which we praise or blame even a little child. Man alone is, as Aristotle defined him, "an ethical animal having perception of right and wrong, justice and injustice, and the like." This is the first great difference arising from man's endowment of reason, which marks him off from animals, and the State from animal commonwealths. The State arises, like those commonwealths, from an original necessity. But, unlike them, it "is shaped and established through the free activity of the

rational will, whose inner nature it reflects." * "Man," says Spinoza, "consists in reason." So does the State. It is, in Hegel's admirable phrase, "Reason manifesting itself as Right."

Again. It is in virtue of reason that man is endowed with the attribute of verbal language to represent thought. The voice of the animal world, even in its most melodious forms—the song of the nightingale or the lark—is only an expression of sensuous feeling. The speech of man, however rude and harsh, is informed by intellection. Hence, no doubt, it was that the old Greeks employed the same vocable—λόγος—to denote reason and word. Human language is the direct outcome of that apprehension of universal relations to which reason is essential. Hobbes maintained that man is a rational animal, because he possesses the endowment of language: "Homo animal rationale quia orationale;" but this is, if I may employ the vulgar phrase, to put the cart before the horse. The true account is that man possesses the endowment of language because he is a rational animal: "Homo animal orationale quia rationale." It is reason which generates these general signs, general names, general propositions, which make up human language, and which are the indispensable instruments of human thought. As St. Augustine said: "Cogitamus, sed verba cogitamus." Sophocles, celebrating in his magnificent choral ode the

* Lasson, *System der Rechtsphilosophie*, p. 297.

wondrousness of man, notes language as among the most distinctive and stupendous of human inventions. And rightly. The whole edifice of man's greatness, in public and in private life, rests upon it. In particular—for that is the point which specially concerns us here—it is in words that man embodies the concepts of Right, and the laws in which those concepts are formulated for the guidance of ordered human life in civil society. The difference between the murmur of bees and the articulate speech of men, indicates the measure of the difference between the State and an animal community.

Once more. Progress is the result of reason manifesting itself in will and expressing itself in language. Every thinker stores up his thought in language. Every generation transmits that treasure to the generations that shall come after. And thus has arisen the world's intellectual wealth. In the words of Abelard, "Not only is language generated by intellect, but it, too, generates intellect:" "Sermo generatur ab intellectu et generat intellectum." * It is language which enables man to capitalize his gains, moral, mental, and material. It is through this endowment that "great things done endure" for our race, and lead to greater. This is what progress means. And of progress the human race only is capable. It is—

* Quoted by Max Müller, *Science of Thought*, p. 41.

"man's distinctive mark alone:
Not God's and not the beasts': God is, they are;
Man partly is, and partly hopes to be."

And human society, we must always remember, is the condition and instrument of this progress, in which, of course, it shares. The ant has not in the least varied since the day when the writer of the book of *Proverbs* sent the human sluggard for a lesson of wisdom to her ways. Bees perform now precisely the same complicated and ingenious acts which Virgil described two thousand years ago in the *Georgics*. Singly and collectively, they remain as they were at the beginning, while man, singly and collectively, has moved onward and upward. And the reason is that the ant, the bee, is a mere *Naturwesen*, bound fast in fate like nature's other products. Because they lack the endowment of rational will, whereby "man is man, and master of his fate," and the endowment of rational language which is the chief instrument of his volition, they abide for ever in the stationary state of instinct. The society of animals, like the art of animals, tends towards no ideal, because the ideal does not exist for animals. The law of progress, rightly considered, is the irresistible attraction for the human will of good, and specially of that highest good which the Schoolmen termed *bonum honestum*, ethical good. The root of progress is the distinctively virile quality which the old Romans aptly called *virtus*: devotion to the

true, the just; to the idea of Right which reason reveals. Advance in knowledge of natural law, and in skill in applying it to the arts of life, is no true *human* progress unless it springs from this root. The real subject of progress is man himself; the real source of progress is in the idea of Right. And in the ever-expanding application of the principles embodying that idea, as it grows in the public conscience, is the third great distinction marking off the State from the animal commonwealth.

Such, then, are the essential differences between human and animal communities; and they are as patent as are the analogies. Animal communities, in their highest forms, are an expression of instinct. The State, in its lowest form, is an expression of reason: a lasting external work in which that distinctive endowment of man is manifested. We will conclude this inquiry into the origin of the State with certain pregnant words of Lasson:—

"The external ground for the existence of the State is the nature of man. There are no men without continuity of social life (Zusammenleben). There is no continuity of social life without order. There is no order without law. There is no law without coercive force. There is no coercive force without organization. And this organization is the State. The inner ground for the existence of the State is man's endowment of Reason, which is the most distinctive part of his manhood." *

* *System der Rechtsphilosophie*, p. 296.

CHAPTER III.

THE END OF THE STATE.

THE next step in our inquiry is, What is the End or Object of the State? And here again we may well follow the guidance of "the master of those who know." "The nature of a thing," according to the Aristotelian dictum, "is its final end" (ἡ δὲ φύσις τέλος ἐστίν). Yes; the nature of a thing and its final end are, in some sort, identical. If we would know its final end, we must know its nature. What, then, is the nature of the State?

I suppose the conception of the State most current in this country is the purely Utilitarian one which regards it as a fortuitous concourse of men bound by the tie of common advantage; a mere machine, driven by the forces of public and private interest; a sort of huge insurance society, the taxes being the premium. Perhaps no one has done more to diffuse this conception among us than Lord Macaulay. It is the underlying thought of one of the most popular—and in many respects justly popular—of his writings, his famous essay on Gladstone's *Church and State.*

And so, in accordance with it, he insists that "the primary end of Government" is "the protection of the persons and property of men." He thinks "that government should be organized solely with a view to [this] main end." He adds "if a government can, without any sacrifice of its main end, promote any other good work—the encouragement of the fine arts, for example—it ought to do so;" while "it is still more evidently the duty of government to promote, always in subordination to its main end, everything which is useful as a means for the attaining of that main end."* Is this a sufficient account of the State?

I venture to say that it is not, any more than the Utilitarian philosophy, upon which it rests, is a sufficient account of man. The protection, not of persons and property, as Macaulay puts it, but of the *rights* of person and property, which is a very different thing, is, no doubt, the duty of the State. But what is a right? and what is the relation of the State to rights? The answer to these questions may enable us to discern the true nature of the State, and to conclude thence to its end.

A right is commonly defined as a moral power residing in a person, in virtue of which he calls anything his own. It is, in point of fact, the

* *Works*, vol. vi. pp. 372, 373.

thing so deeply detested by the whole Utilitarian School, "a metaphysical entity," and cannot possibly be other. Which, after all, need excite no surprise; for every problem of thought, if we investigate it closely enough, lands us in metaphysics. "Man," Schopenhauer truly says, "is a metaphysical animal." He ever asks, and cannot keep from asking, Why? The other animals only ask, How? A right arises from the nature of things, according to that excellent saying of Cicero: "nos ad justitiam natos; neque opinione, sed natura, constitutum esse jus." * And so Trendelenburg: "All right, so far as it is right and not unright (*Unrecht*), issues from the impulse (*Trieb*) to maintain an ethical existence." † And, therefore, it is only of man that right, in the strict sense—right with its correlative duty—can be predicated; for man alone is an ethical being. I touched upon this matter in the last Chapter. It will be proper, in the present connection, to add a few words to what I there said. In all organic being there is an internally directive power which is its chief characteristic. The lower organic natures are blindly and sensuously influenced by that power. In the higher organic natures it is rationally and freely exerted; and then we have rights and

* *De Legibus*, l. i. c. 10. I know of nothing better in Cicero's philosophical works than his argument upon this subject. It is just as valid now as when it was written.

† *Naturrecht auf dem Grunde der Ethik*, p. 46.

duties—that is to say, morality. If the moral ideal is considered in its individual character, as independently manifested in the pure will, or as human perfection, it is called virtue; if viewed in the form of the universal, as a directive rule, winning over and persuading the individual will, it is moral obligation. The two are but different sides or aspects of the same thing.

There are, as the Scholastics have it, three degrees in the dynamic evolution of being—*ens*, *suppositum*, *hypostasis:* thing, individual, person. Man alone is a *person*, and capable of right (*subjectum juris*, *rechtsfähig*). He alone possesses the faculty of recognizing and willing the creative thought of his being, of discerning the law of virtue, under which he is born, and of working for his true perfection, which is ethical. He alone is free, according to Aristotle's definition of freedom, for he alone exists for himself and not for another; he alone is self-determined and an end to himself. It is, I say, from the ground of his personality that his rights and their correlative duties spring up. And all his rights are but aspects of his first aboriginal right to belong to himself, to develop his personality. Objectively considered, they all spring from Right—a great, rational, organic whole, embracing and harmonizing all particular rights; independent of human volition; known perfectly only to the Absolute and Eternal, in whom it is ever conceived, ever realized: an

ideal, but most actual. It is, as Bluntschli observes —I shall have to return to that point presently— "this law of nature and reason which furnishes the foundation and limits of historical formulated law."*

As a *person*, then, man has rights—rights which attach to human nature, and may, therefore, properly be called natural. But only in society is personality realized and developed. The human "I" requires for its explication the human "Thou." Personality means not only rights, but rights recognized and allowed. Green well points out that a right is, "on the one hand, a claim of the individual arising out of his rational nature, to the free exercise of some faculty; on the other, a concession of that claim by society, a power given by it to the individual of putting the claim in force."† Civil society, as we saw in the last Chapter, is man's natural state. The very concept of the person implies intercourse with others, implies reciprocal rights. Of these reciprocal rights positive law is the guarantee and the shield. But what is positive law?

All law, according to the dictum of Aquinas cited in the First Chapter, is a function of Reason. Human law, properly considered, is not what Mirabeau called it, "a caprice:" it is the rational or ethical will—the two adjectives mean the same

* *Politik*, p. 31. Cicero calls it, very happily, "ipsa naturæ ratio, quæ est lex divina et humana."—*De Officiis*, lib. iii. c. 6.

† *Works*, vol. ii. p. 450.

—of the commonwealth; or, to quote the well-known dictum of Kant, "the expression of the reason (*Vernunft*) common to all." It is the recognition and sanction by the State of a portion of that system of correlative rights and duties which Reason itself reveals. It is, in strictness, not made, but apprehended and declared and enforced by man. Heraclitus, two thousand years ago, summed the matter up: "All human laws receive their life from the One Divine Law" —the Law of Nature and Reason. And so Aquinas: "A human law bears the character of law so far as it is in conformity with right reason: and, in that point of view, it is manifestly derived from the Eternal Law. But inasmuch as any human law recedes from reason, it is called a wicked law; and to that extent it bears not the character of law, but rather of an act of violence." * Or, as he elsewhere puts it, † "Laws enacted by men are either just or unjust. If they are just, they have a binding force in the court of conscience from the Eternal Law, whence they are derived. . . . Unjust laws are not binding in the court of conscience, except, perhaps, for the avoiding of scandal and turmoil." ‡

* *Summa Theologica*, 1, 2, q. 93, a. 3, ad. 2. † *Ibid.* q. 96, a. 4.

‡ On this subject Bluntschli writes, "Das Gesetz ist seinem Wesen nach der Ausdruck und die Offenbarung des natürlichen Rechtes und nicht ein willkürliches Product. . . . Auch das ungerechte Gesetz ist, so lange es in aüsserer Kraft besteht, von den untergeordneten Organen des Staates als ein gültiges zu handhaben."—*Allgemeines Staatsrecht*, p. 140.

Let us pursue further our inquiry regarding the nature and attributes of the State. We saw in the last Chapter that it arises from the nature of man, of which the tendency to live in civil society is part and parcel. And, in view of that tendency, we may say that the State is a natural entity. But that tendency is not realized by blind unconscious growth, as of the plant. It is realized by the human will. A man may cut himself off from society and still live, say as a religious recluse, a human life. A branch cut off from a tree perishes. The law of the body politic is other than the law of the vegetable world. It is in virtue of human volition that the State is a polity, or political entity; but it is more than a political entity. It is a fellowship of *persons*—that is, of moral beings for moral ends. The necessities of existence force men into polities. But the end of civil societies is not mere existence.. It is existence in accordance with man's highest and distinctive attribute—Reason. And so Aristotle insists that the State was formed that men might live, but exists that they may live nobly: *γιγνομένη μὲν οὖν τοῦ ζῆν ἕνεκεν οὖσα δὲ τοῦ εὖ ζῆν.* The State is the realized order of Right, as the Germans say: "die realisirte Rechtsordnung." It is an ethical entity. And as the organic manifestation of the personality of a people, it may properly be called an organism or a person. It is an organism, for it is, in the words of Bluntschli,

"a great body, capable of taking up into itself the feelings and thoughts of a people, of uttering them in laws, and of realizing them in facts." * It is a person, for rights and duties, the distinctive notes of personality, attach to it.

Such, then, is the State. And, being such, its end is "den Rechtszustand zu schaffen und zu sichern" —that is, to define, maintain, amplify, and secure its own rights and the rights of its subjects. Let us consider this a little in detail. And we will begin with the lower order of rights; the rights of individual persons.

Until a century ago, it was well-nigh forgotten, throughout the greater part of the Continent of Europe, that such rights exist. In the New Monarchy, which had arisen on the ruins of medieval liberties, the old doctrine succinctly formulated by Aquinas, that "the king exists for the people," was contemptuously rejected. It was held that the people exist for the king, whose "right divine to govern wrong" was the favourite theme of a servile clergy. The Parliamentary assemblies, which throughout the Middle Ages had served as the guarantees of individual right, were suppressed, or turned into mere machinery for the registration of the royal will. Louis the Fourteenth's doctrine, "L'État c'est moi," was accepted as *the* first principle in politics, and was the germ of what Lamennais has well called "that terrible disease

* *Allgemeine Staatslehre*, p. 22.

of Royalism," which, little by little, ate out all the forces of society. The drastic remedy of the French Revolution has, after long working, expelled that disease from most European countries. We may well demur—every scientific jurisprudent must demur—to many propositions of *The Declaration of the Rights of the Man and the Citizen*, which served as its manifesto. But we should, at all events, recognize that it impressed deeply, we may hope ineradicably, upon the popular mind the truth that man does possess certain rights as man—rights which may properly be called natural, as issuing from the nature of things, as attaching to the attribute of personality, which is the very ground of human nature. It is not necessary that we should here consider the various ways in which these rights have been classified by philosophers and jurisprudents. But it is of importance to insist that they all spring from what Trendelenburg has happily called "the self-same fount of right," and that they "are governed by the unity of an inherent co-ordinating idea." * It was the apprehension of this truth which led Spinoza to specify as the end of the State *quoad* the individual, liberty: which he explains as meaning "that men should use in security all their endowments, mental and physical, and make free use of their reason." †

* *Naturrecht auf dem Grunde der Ethik*, p. 1.

† *Tractatus Theologo-Politicus*, c. xx. 11.

There are four manifestations of this aboriginal right of man to freedom upon which, for our present purpose, it will be well to touch. The first is the right of existence—liberty to live; the next, the right to the self-determined use of the human faculties, mental and physical, which is personal liberty; the third, the right of property, which is realized liberty; the fourth, the right to be considered in the legislation and government of the commonwealth, which is political liberty. But these rights of the individual are not, of course, absolute. They are conditioned by duties, without which they can no more exist than can the three sides of a triangle without the angles. They are ethical entities—that is to say, they are subject to the moral law, and are strictly fiduciary in their character. Again, they are subject to another limitation. Although, in themselves, they are not created nor abrogable by positive law, they are held in subordination to the rights of the State in which they acquire validity and coerciveness. Let us dwell a little on both these points.

The aboriginal rights of the individual are conditioned by duties. And if those duties are disdained, the rights lose their character, and become wrongs. This is true of all of them. It is true of the right of existence, which is conditioned by the duty of labour for the benefit of the community. No one, capable of doing any

useful thing, has a right to otiose existence. The Apostolic injunction, "that if any would not work, neither should he eat," is a moral axiom of universal application. Of course, it does not hold good when it is not the will, but the ability to work which is wanting, whether by reason of immaturity, senescence, disease, or other accident. Then the right to existence remains; and I may observe that the recognition of that right is the foundation of the English Poor Law. The State is the expanded family; and no member of that family should be left, undeservingly, to starve. But it should be noted that this right is strictly personal. It does not imply a right to beget offspring for the community to support. Mill is well warranted when he observes, "To bring a child into existence without a fair prospect of being able, not only to provide food for its body, but instruction and training for its mind, is a moral crime, both against the unfortunate offspring and against society."* I add that there must be something very wrong in any commonwealth where many people have, in fact, no "fair prospect" of being able to make such provision. The right to personal freedom, again, and all that it implies—the right to freedom of conscience, freedom of the press, freedom of public meeting, and the large class of rights of personal relations (*Personenverbände*)—is conditioned by the duty of respecting those limits

* *On Liberty*, p. 189.

within which right resides: "fines quos ultraque citraque nequit consistere rectum." Thus, for example, though "thought is free," as soon as it manifests itself externally, and is brought in contact with the environment, it is confronted with the law grounded in the very faculty of reason whence thought springs. No sane person, I suppose, would maintain that every one has an absolute and unlimited right "to give public utterance, in every possible shape, by every possible channel, without any let or hindrance, to all his notions whatsoever." * So, too, the right of public meeting—unquestionably a part of the right of personal liberty—is not absolute and unlimited. It does not mean a right to assemble tumultuously, or in arms, to the danger of the public peace; or to block thoroughfares, or

* See Cardinal Newman's *Letter to the Duke of Norfolk*, § 6. It may be noted that Spinoza, in Chapter XX. of his *Tractatus Theologico-Politicus*, the theme of which is "In libera republica unicuique et sentire quæ velit et quæ sentiat dicere licere," when summing up his argument, clearly indicates the limitations of the principle for which he contends: "His ostendimus: I. impossibile esse, libertatem hominibus dicendi ea, quæ sentiunt adimere; II. hanc libertatem *salvo jure et auctoritate summarum potestatum* unicuique concedi, et eandem unumquemque servare posse, *salvo eodem jure, si nullam inde licentiam sumat ad aliquid in rempublicam tanquam jus introducendum, vel aliquid contra receptas leges agendum;* III. hanc eandem libertatem unumque habere posse *servata reipublicæ pace*, et nulla ex eadem incommoda oriri quæ facile coerceri non possint; IV. eandem *salva etiam pietate* unumquemque habere posse."

places of general resort, to the detriment of the common convenience. And there is clearly a great distinction to be made between meetings in halls or rooms, and meetings in the open air: a distinction upon which the Belgian Constitution very properly insists.* I need hardly observe that in England, of late, this great right has been grossly abused, and has become, in practice, a grave wrong. Such, beyond question, is the true account of those "monster meetings" —the phrase is apt—which, from time to time, disfigure Hyde Park, and which I ventured to describe, some years ago, as mere multitudinous assemblages, taught to yell at the word of command, with no pretence of discussion, no opportunity of hearing the other side of a question, and no capacity of understanding it, if they did

* In Art. 19: "Les Belges ont le droit de s'assembler paisiblement et sans armes, en se conformant aux lois qui peuvent régler l'exercice de ce droit, sans néanmoins le soumettre à une autorisation préalable. Cette disposition ne s'applique point aux rassemblements en plein air, qui restent entièrement soumis aux lois de police."

M. Giron, commenting upon this Article, writes as follows: "Est donc légal le réglement communal qui interdit tout attroupement de nature à encombrer la voie publique, à diminuer la liberté ou la sécurité du passage, et toute manifestation publique pouvant ou ameuter les citoyens ou amener du désordre, troubler la paix ou la tranquillité des habitants, soit qu'elle ait lieu par des chants, cris, bruits, tapages, sérénades, illuminations, cortèges, expositions de drapeaux ou d'emblèmes, soit de toute autre manière."—*Le Droit Publique de la Belgique*, p. 464.

hear it; hindrances to the discharge of the lawful business of a law-abiding subject, and a gross infringement of his liberty; overflowings of rascaldom and anarchy; nefarious menaces of brute force, which should be sternly repressed as a public danger." *

We cannot say, then, that a man's right to personal liberty implies a licence to do what he likes with his endowments, whether of body or mind. As little can we say that his right to property implies the same unlimited dominion over it. The philosophical justification of this right is that private property is necessary for the explication of personality in the workaday world. A desire to appropriate things external to us, to convert them into lasting instruments of our will, is one of the elements of our being. We cannot picture to ourselves a state of existence in which man does not exclusively possess what is needful for self-preservation. The ultimate ground of private property, then, is necessity arising from the nature of things. Man, alone of all animals an end to himself, has an indefeasible right to live out his own life; he has an indefeasible right to what is necessary to enable him to do that. Property is necessary. It belongs to the moral realm — the realm of rights. It springs from human personality; from the ethical idea and psychological being of man. But only in civil

* *On Shibboleths*, p. 115.

society is this right, like all rights, realized. Property, in its original idea, is the guarantee to a man, by the State, of the fruits of his own labour and abstinence—that is, of the ethical exercise of his personality. The *ethical* exercise, I say. Possession is one thing: property is quite another. A thief, by availing himself of possibility and power, may possess my watch; but he would have no property in it, for he would have acquired no right to it through the unethical exercise of his personality whereby he obtained it. He would have no title to it which the State would protect, title being *justa causa possidendi*. Such is the right to property, which may properly be regarded as being of the nature of a social reward. And the right, like all rights, is indissolubly linked to obligations. Property is fiduciary; it is held for the benefit not merely of the proprietor, but of the commonwealth. Hence it is that the application of a portion of it for the relief of the suffering members of the commonwealth is something more than a duty of charity; it is a duty of strict justice—*debitum legale*, Aquinas calls it. I add that though the right to property may, as we have seen, be properly reckoned among natural rights, it belongs, according to the accurate distinction of the Schoolmen, to the secondary sphere of such rights,* and not,

* "It is not against the natural law," writes Aquinas, "but is added thereto by the discovery (*adinventionem*) of human reason."—*Summa Theologica*, 2, 2, q. 66, a. 2, ad. 1.

like the right of existence, to the primary sphere. And so it has to give way to that higher right if the two come into conflict. It is the common teaching of the greatest masters of ethical science, and has been for the last thousand years, that extreme necessity makes all things common; and that a man who, through no fault of his own, is in danger of perishing by hunger, may, without culpability, take from another, even against the other's wish, what is necessary for the sustentation of life.

I suppose this view of property will seem monstrous to that large class, who, as the French say, "mangent leurs rentes," in all good conscience, apparently supposing that they were sent into the world for that purpose alone.

> "Full to the utmost measure of what bliss
> Human desires can seek or apprehend,"

they do not even suspect, apparently, that wealth has any other use than that of ministering to their own gratification; that they are called upon to fulfil any other social function than that of absorbing—gracefully, if possible—the proceeds of their stocks and shares. That duties attach to the possession of *land*, is a belief which has never been wholly effaced from the public mind, though of late years it has grown dim. That this holds good of all kinds of property, seems to be very widely accounted an amazing, an irrational doctrine. And yet it is true; and that opposite

doctrine of "the inalienable nature of purchased beef," which Carlyle thought the one tenet held with real assent by most Englishmen, is not true. As the rights of property cannot subsist without correlative and commensurate duties, so the performance of those duties cannot be neglected without bringing the rights into peril. We cannot insist upon the rights if we refuse to discharge the duties; or, if we do so insist, we shall find our insistence, in the long run, idle. More. A man's *moral* claim to his rights ceases if he cease to perform the correlative duties. And if it is wrong then to deprive him of them—I am speaking from the point of view not of human law, but of ethics, whence, however, all our legislation derives its very life—the wrong lies not in any injustice which would be done to him, but in the tendency of the measures which would have to be employed against him to unloose the bonds of the social order. Private property is a great, an indispensable institution ordained by man for the common good. But the respect due to the form in which it exists, in any given condition of society, depends upon its practical working. If its owners forget the tenure upon which they hold it, if by rapacity, by luxury, by inhumanity they make their ownership a public mischief instead of a public benefit, they are undermining the existing order of proprietary rights, and are preparing the ruin of the present social system. Such are the first principles

applicable to this grave matter—principles largely effaced from the public mind by that debased and debasing Utilitarianism which proclaims pleasure as the end of life, self-interest as the rule of life, and money payment as the bond of life: which loses sight of the cardinal truth that society is an organism, a rational organism; that the law of the human race is solidarity governed by the eternal and immutable principles of Right.

Once more. The right to political liberty—to be considered in the legislation and administration of a country—is conditioned and limited by duties. It is a right which, like the other rights just considered, springs from the very ground of human nature. A man is a *person*, not a thing, nor a mere animal; and his rational co-operation in the commonwealth is necessary to his ethical development, and to that of his fellows. I say that he has a right to be considered politically; and in a high state of civilization "considered" means directly or indirectly consulted. This does not imply the absurdity of asking his opinion on legislative or administrative problems regarding which he is absolutely ignorant. But Mill is well warranted in writing, "It is a personal injustice to withhold from any one, unless for the prevention of greater evils"—I shall touch upon the proviso presently—"the ordinary privilege of having his voice reckoned in the disposal of affairs in which he has the same interest as other

people." * To say that a man has a natural right to a vote is nonsense. To say that he has a natural right to a share of influence in the State corresponding with his personality, is the soundest of sense. And, no doubt, in the existing order of European society, a vote is the readiest and simplest way of exercising that influence; which is not equivalent to saying that is always, or even generally, the best way. But a man's right to political influence is conditioned by the duty of using it *in debito modo;* and gross violation of this duty properly entails the suspension or deprivation of the right. Every one recognizes that this is so when a man sells his vote for money. But few people, apparently, comprehend the reason, which is that the electoral franchise is not only a right, but a trust; and a trust because it is a right. To sell a vote for money is not, however, the commonest way of violating the duty which its possession imposes. "A base and mischievous vote is now, I am convinced, much oftener given from the voter's personal interest, or class interest, or some mean feeling in his own mind." † I am again quoting Mill; and I go on to express my entire concurrence with his opinion that this evil, which assuredly the law should always discourage, if it can seldom reach, it now actually protects by

* *Considerations on Representative Government*, p. 159.

† *Ibid.*, p. 195.

the foolish function of the ballot. The practical effect of the ballot is to enable a voter to yield himself up to those unworthy and immoral motives "free from all sense of shame or responsibility." Experience amply vindicates the truth of Mill's observation: "People will give dishonest or mean votes from lucre, from malice, from pique, from personal rivalry, even from the interests or prejudices of class or sect, more readily in secret than in public." * It is not too much to say that the introduction into elections of voting by ballot, has done more than anything else to obliterate from the public mind the true conception of the right of the individual to political power as fiduciary; to diffuse the notion that it is an absolute possession which a man may employ as he likes for the gratification of his "own interest, pleasure, or caprice; the same feelings and purposes, on a humbler scale, which actuate a despot and an oppressor." †

All the rights, then, which attach to the individual as a person, have limitations which may be described as inherent in them, for they arise from the very idea of right as a moral entity. These rights it is the office of the

* *Considerations on Representative Government*, p. 203.

† *Ibid.*, p. 192.

State to protect and amplify. "In society," according to Kant's admirable saying, "man becomes more a man." The State is the instrument for the development of private right, for the evolution of the individual. I may remark, in passing, that the State, in certain cases, is bound to maintain a right attaching to personality, even when those invested therewith would sacrifice it. The maxim of jurisprudence, "Volenti non fit injuria," does not always hold good. No woman is at liberty, for example, to infringe her right to existence by consenting to "an illegal operation," or to extinguish her right to personal liberty by selling herself into meritricious slavery. This by the way. My present point is that the rights attaching to man as a person are limited, not only in the manner which has just been considered, but also by the rights of the State in which they require validity and coerciveness. The State is the nation in its corporate capacity; and the rights of the organic whole come before the rights of any constituent part. Or, to put the matter in another way, the community, taken collectively as forming a moral body, is superior to the community taken distributively, in each of its members. Every one will allow that the individual may sometimes be justly required to sacrifice himself for the State. No one would maintain that the State should ever sacrifice

itself for the individual. The State, as a moral body, a person, is invested with all the great rights of personality—the right of existence, the right of personal liberty, the right of property, the right of political power. These rights, of course, are no more unlimited than are the corresponding rights of the individual. But those rights of the individual are held in subordination to them. For a just cause, the State has the right—the very word "right" implies a just cause—to take the life of any one of its members, or to require him to lay down his life for it, and to find his glory and happiness in the sacrifice: "Dulce et decorum est pro patria mori." For a just cause it has a right to restrict his personal liberty, to take a portion, or even the whole, of his property, to deprive him, partly or entirely, of political power. This is not the doctrine preached by the late M. Gambetta when he told the French clergy, "Render unto Cæsar the things which are Cæsar's, and all is Cæsar's." All is not Cæsar's, whether the Cæsar be a single or a many-headed tyrant. And there are cases when passive resistance to such a claim is permissible: cases in which active resistance is permissible and revolution justifiable. The State is an association of moral beings. To say that, is to say that its power has moral limits. And grave infringement of those limits invalidates its moral claim to obedience. But the maxim, "Salus reipublicæ suprema lex," is true. Human

society is governed by the great law of sacrifice. The most sacred of individual rights must give way, in extreme necessity, to the rights of the community; the individual good to the common good.*

To sum up, then. We may say that the end of the State, both for itself and its subjects, is what Aristotle calls εὖ ζῆν:† noble or worthy life;

* It seems difficult to conceive of juster views on the subject of resistance to the civil power than those expressed for it by St. Thomas Aquinas. He teaches that a tyrannical government is not a lawful government, and that a general rising against such a government is not sedition, provided it does not involve evils greater than those which it seeks to remedy. He also points out that when the ruler bears sway in virtue of a constitutional pact—and such was the case in most medieval governments, as the coronation offices sufficiently witness—breach of that pact entitles his subjects to depose him. See the *Summa Theologica*, 2, 2, q. 42, a. 2, ad. 3, and the *De Regimine Principum*, l. i. c. 6. This is, of course, a very different doctrine from "the sacred right of insurrection" proclaimed by French Jacobinism. Schiller has admirably summed the matter up in those very fine lines of *Wilhelm Tell:*

"Nein, eine Grenze hat Tyrannenmacht:
Wenn der Gedrückte nirgends Recht kann finden,
Wenn unerträglich wird die Last—greift er
Hinauf getrosten Muthes in den Himmel,
Und holt herunter seine ew'gen Rechte
Die droben hangen unveräusserlich
Und unzerbrechlich, wie die Sterne selbst.
Zum letzten Mittel, wenn kein andres mehr
Verfangen will, ist ihm das Schwert gegeben."

† So Plato, in the Eighth Book of the *Laws:* Δεῖ δὲ αὐτὴν (τὴν πόλιν) καθάπερ ἕνα ἄνθρωπον ζῆν εὖ.

a complete and self-sufficient existence; the development of its own personality, and of the personalities of its subjects, under the law of Right. It exists for itself and for the individual, just as the individual exists for it and for himself. It exists for the well-being of the whole, by means of the constituent parts, and of the constituent parts by means of the whole. And we must understand well-being in the widest sense of the word civilization. We must take it not only as signifying the kind of improvement which distinguishes a wealthy and prosperous nation from savages and barbarians, but also, and far more, as denoting eminence in the best characteristics of man and society; advance on the road to perfection: happiness, nobleness, wisdom.* It is in this eminence, this advance, these spiritual goods, that the real greatness of men and of nations consists. The roots of human progress—not only the grace and beauty of life, but material prosperity and power, spring from them — are probity, honour, the capacity of self-sacrifice, the subordination to high ideals. They are essential to the εὖ ζῆν, the

* "The word Civilization is a word of double meaning. We are accustomed to call a country civilized if we think it more improved; more eminent in the best characteristics of Man and Society; further advanced in the road to perfection, happier, nobler, wiser. But, in another sense, it stands for that kind of improvement only, which distinguishes a wealthy and powerful nation from savages or barbarians."—Mill's *Discussions and Dissertations*, vol. i. p. 160.

noble or worthy existence of the State. They are essential to its security, influence, and dignity, which are the conditions and the means of the security, influence, and dignity of its subjects. For its subjects are itself.

CHAPTER IV.

THE FUNCTIONS OF THE STATE.

THE State, then, is the realized order of Right. Its end is not the manufacture of "the greatest happiness of the greatest number," or of any number,* but the vindication and development of its own rights and the rights of its subjects. What are its proper functions in promoting that end? It is perfectly clear that those functions will vary vastly in the vastly varying stages of social evolution. They will be quite other in the enormous complexity of modern life from what they were in the utter simplicity of the patriarchal period, or in the comparative simplicity of the medieval. I am not here writing a historical treatise, or an academical disquisition. I can only indicate what appears to me the general principle which should determine the sphere of the State's action, and then illustrate it by exhibiting some

* Lasson remarks, in his trenchant way, "Der Staat hat in keinem Falle die Aufgabe die Menschen glücklich zu machen. Nur ein grober Eudämonismus kann daran denken" (*System der Rechtsphilosophie*, p. 319).

of its applications to the present condition of European society, with especial reference to our own country.

The primary right of the State, as of the individual, is, to be. Now, war, not peace, is the law of life; and the struggle for existence is a universal fact. Obviously, the first function of the State is to maintain, in a condition of the utmost efficiency, such fleets and armies, and other preparations for war, as its security against rival States demands. This is the condition of its external peace, according to the hackneyed dictum, "Si vis pacem para bellum." Equally obvious is its function to maintain its internal tranquillity by its magistrates and police. They are its ministers attending continually upon the application and enforcement of the rational will which finds expression in its legislation—those dictates of Right, that Justice, wherein it is rooted and grounded.

Again. The right of the State, as we have seen, is not merely to existence, but to complete existence, noble and worthy existence, an existence in accordance with the dignity of human nature. Hence, among its functions must be reckoned the promotion of civilization in both senses of the word.* It is the guardian of the ideal and

* See p. 53.

of the material interests of the people whose personalities it incorporates: and upon its efficient and prudent discharge of the trust depend its dignity and greatness—*majestas* was the fine old Roman word. I cannot here dwell—nor is it necessary for the present purpose—upon the many and various ways in which this function of the State is fulfilled. But I may observe that clearly it should undertake, or effectively provide for, all strictly public works. Things of imperial importance it should itself control: for example the roads of a country, especially what are now the chief highways, the railways. Matters of local rather than of general concern, such as lighting, drainage, and water-supply, it may properly entrust to the municipalities, or other corporate bodies, invested by it with due powers for dealing with them. But the rivers, the woods, the mountains, and all those gifts of nature which constitute the amenity of a country, should be under its direct care, as being among the most precious of a nation's possessions.

So much seems clear. The real difficulty is to determine what are the proper limits of the State's interference with individual action.

The true principle would appear to be that the State should leave free all interests and faculties

of its subjects—*Kräfte* is the German word, but "mights" is not an adequate translation—so far as is consistent with the maintenance of its own rights. It is no part of its functions to do for them what they can do for themselves better, or even as well. It is a part, and a very important part, of its functions to allow them to develop their own personality, to become more and more men, to make the most and the best of themselves, for their own and the common welfare. And not only to allow, but prudently to aid, whether by direct encouragement or by the removal of hindrances. This is the just mean of State action in respect of the subject. It is equally removed from a false paternalism and a false individualism.

The false paternal theory of the State's functions makes it not merely a high, but the only factor of human development, as the creator and arbiter of the rights of its subjects. The sufficient condemnation of this doctrine is that it is utterly unethical: that it is altogether fatal to that human freedom which is the essence of personality. It is expounded, in different forms, by two very different schools. The one is what we may call the German school of political mysticism: a philosophical travesty of the old very unphilosophical legitimism, which invests the State—the monarchical State—with theocratic attributes, and imposes on the subject the one duty, to obey: a school of which, I suppose, Stahl is the most

considerable writer. It would seem from some of his public utterances that the present German Emperor must have been deeply influenced by the teachings of this school, which, so far as I know, is its only title—whatever that may be worth—to the least consideration.

The other—a far more influential school in contemporary Europe—is the Jacobin or ultra-Radical school which, consciously or unconsciously, represents the sophisms of Rousseau. This school insists that man belongs wholly to the State: the falsely democratic State resting upon a fictitious universal suffrage—I shall justify this account of it in a subsequent Chapter. Statolatry is a barbarous word which I write with reluctance. It expresses, however, an indubitable fact. The falsely democratic State, exalting itself "above all that is called God or that is worshipped," is exhibited by the school of which I am speaking as an earthly Providence, and the only real one; the sole object entitled to man's reverence and awe. The cardinal principle of this school, as expounded by the late M. Gambetta, is, "Il vous est défendu d'aller contre l'opinion dominante." Does any one venture to appeal to the ancient maxim, "Thou shalt not follow a multitude to do evil"? The answer is, "A multitude do evil? What flat blasphemy! It is impossible. What the people"—the numerical majority—"wishes is just; their will is the very source and norm

of right." It is merely a revival of ancient Cæsarism, with this difference—a difference vastly for the worse—that the new Cæsar is not one, but many. It is a negation of that fundamental truth that human authority is limited and fiduciary, and subject to the eternal, imprescriptible, and indefeasible laws of ethics. And it is not the less, it is the more dangerous, because it comes to us in the name of liberty. It is a manifestation of that Liberalism which Burke described as not liberal, which in Rivarol's phrase is the diminutive of liberty. Unquestionably, the invasion of human freedom by the falsely democratic State is one of the greatest perils of the age.

The opposite error to this false paternalism is the false individualism professing the doctrine of *laissez-faire*, which sees in civil society nothing more than a struggle for existence among millions of human atoms; which regards the function of the State as nothing more than to keep the ring while they fight. And it is in the same condemnation. It ignores or denies that great truth unfolded in the last Chapter, that as man is an ethical animal, so the State is an ethical organism; and that the action of the State should therefore be governed by "the moral laws of nature and of nations."

So much may suffice as to these two manifestations of the "falsehood of extremes." Let us now, in the light of the general principle above laid

down, consider seven "burning questions of the day," as they have been called, to which that general principle is applicable.

1. The State and Education.

First, then, as to education. What is the function of the State regarding it? The claim is made, and has largely prevailed throughout the civilized world, that the education of children is the immediate concern of the State. This claim appears to me, upon the face of it, monstrous. Of all liberties which are bound up with, and flow from, human personality, one of the most sacred* is the father's right to educate his children as his conscience dictates. The State, upon the other hand, has the right and the duty to maintain for its subjects the conditions under which a free exercise of their faculties is possible, for their own and the general advantage. And in view of that end it is warranted in insisting that a modicum of instruction be acquired by them all. We live in an age where well-nigh every adult male is directly entrusted with a share of political power. The State may justly require, and ought to require, that he shall receive such

* Mill writes, "It is one of the most sacred duties of the parents (or as law and usage now stand, the father), after summoning a human being into the world, to give to that being an education fitting him to perform his part well in life towards others and towards himself."—*On Liberty*, p. 189.

training, intellectual and moral, as will enable him to realize, so far as may be possible, the responsibilities involved in its exercise. We live in an age when national prosperity is largely dependent upon individual culture. The State may justly require that in this respect its subjects shall, at the least, not fall behind the subjects of rival nations. Such, and such only, is its function in respect of the general education of the country. And if the father cannot, or will not, comply with these legitimate requirements, the State is warranted in interfering, directly or indirectly, to supply his default. This is the principle on which grants in aid of denominational primary education have been given in this country. It is the principle of the Act which originally established School Boards; a measure sound and just in itself, whatever we may think of particular provisions of it, and of the application given to them—questions with which I am not here concerned.

That is the function of the State with regard to the general education of the country, which, of course, must be of the kind called "primary." Its function with regard to education of a higher kind is similar. For example, it is bound to see that the Universities and great public schools efficiently discharge the duties entrusted to them, while leaving them the greatest possible liberty as to methods and details. The interference of the British legislature, in our own day, with these

institutions for their improvement and greater utility, is entirely warranted; which, of course, is not the same thing as saying that it has been, in all respects, judicious and beneficial. But what is always unwarrantable, except, as Mill remarks, "when society in general is so backward that it could not or would not provide for itself any proper institutions of education unless the government undertook the task," is that the State should "take upon itself the business of schools and universities." * It is not the function of the State to be the general schoolmaster of its subjects. And its usurpation of this function, as in France, is a gross infringement of individual right. It is also a deadly blow to that individuality of character which the State is bound to cherish and protect, as an indispensable element of national well-being. Diversity of education is a chief factor of such individuality. In the sagacious words of Mill, "A general State education is a mere contrivance for moulding people to be exactly like one another; and as the mould in which it casts them is that which pleases the predominant power in the government, whether this be a monarch, a priesthood, an aristocracy, or the majority of the existing generation, in proportion as it is efficient and successful, it establishes a despotism over the mind, leading by natural tendency to one over the body." †

* *On Liberty*, p. 191. † *Ibid.*

2. The State and Religion.

Next let us inquire what is the function of the State with regard to religion. I speak of the State as it exists *hic et nunc*. It appears to me that the highest *idea* of the State involves the profession of a common faith by its subjects. Religion is both the greatest bond of political unity, and the most effective guardian of public morality. Plato, in the *Republic*, expresses the wisdom of the ancients on this subject when he describes "the erection of temples, and the appointment of sacrifices, and other ceremonies in honour of the gods, and all the observances which we must adopt in order to propitiate the inhabitants of the other world," "as the most momentous, the most august, and the highest acts of legislation." So, in the Age of Faith, the vision of the seer of Patmos was realized; the "kingdoms of this world"—or, at all events, of the Western world—had "become the kingdoms of our Lord, and of His Christ:" and the first note of the State was Christianity.* But Christendom

* Accordingly, St. Thomas Aquinas writes, "Finis ad quem principaliter rex intendere debet in se ipso et in subditis est æterna beatitudo" (*De Reg. Prin.*, l. iii. c. 4). Hence the severity of mediæval legislation against heresy. "It is much worse," writes Aquinas, "to corrupt the faith which is the life of the soul, than to forge money, which is merely an instrument of temporal good. Therefore, if forgers and other malefactors are justly delivered to death by the secular ruler, so *a fortiori* should be convicted heretics."—*Summa Theologica*, 2, 2, q. 11, a. 3.

is as much a thing of the past as is classic Hellas. We live in an age not of religious unity, but of religious disunity; in an age, not of faith, but of unfaith. And the attitude of the State towards religion in such an age, must be far other than what it was in ancient Greece or in medieval Europe. The modern State is compelled, by the nature of the case, to profess itself "incompetent in the matter of cults:" the essentially modern principle of toleration is forced upon it. "My dominion ends," said the First Napoleon, "where the dominion of conscience begins;" expressing, with his wonted clearness and incisiveness, the principle which he was, in some sort, to translate into fact.

What, then, in such an age as the present, is the function of the State with regard to religion? It appears to me admirably indicated in the well-known words of Adam Smith: "Philosophic good temper and moderation with regard to every religious creed." Benevolent neutrality seems to be the true attitude of the State towards all cults, which do not directly conflict with its own rights and duties. And this for a reason, well expressed by an ancient Chinese Emperor, that "the great principle of Eternal Right" (Tâo)—which is the foundation of the State—"underlies all religions, although it does not always appear in the same form." On no State is this benevolent neutrality more imperative than on the British, which is at

once a great Protestant, a great Catholic, a great Mohammedan, and a great Hindu power. Whether or no the State should accord pecuniary subventions to the different cults existing in its territory, as is done in France,* is a question merely of expediency, and involves no point of principle. But certain it is that, as the Western world at present exists, no State can fairly adopt as its own any religious profession.

"Adopt," I say. It does not in the least follow that where an Established Church already exists, it should be disestablished, and its property pillaged. Such a course is often demanded in respect of the Church of England, and is supported by arguments of which some seem to me decidedly dishonest, and all utterly unconvincing. The most pretentious of them is grounded on what is called "the right of religious equality." But the pretence is empty. Such a right does not exist. It is no part of the *lex naturæ*, either in the primary or the secondary sphere. It is unknown to the common law of this country, and is not recognized in the statutes. It is a mere spurious fabrication. It illustrates the obliteration of the genuine idea of right from the general mind, and the prevailing tendency to invest with

* It must not be forgotten that the beggarly stipends paid to the Catholic clergy in France, are in compensation for the secularization of their property by one of the most gigantic and flagitious acts of confiscation which the world has ever witnessed.

that august name any whim, or prejudice, or ebullition of concupiscence. The question of the Established Church of England, is an eminently practical one, and should be viewed not in the mist of a fictitious "right of religious equality," but in the sunlight of actual facts. The Established Church belongs to an order of things which is the outcome of English history, and into which we have been born. It is part of "that prescriptive constitution which," to use the words of Burke, "has grown out of the peculiar circumstances, occasions, tempers, dispositions, and moral, civil, and social habitudes of the people." The point for a publicist to consider is, not whether, if he were writing a treatise *De Republica*, or excogitating a brand new polity, he would make provision for such an institution, but whether the institution, as it exists and works, subserves or thwarts the true end of the State. I do not believe any man can honestly declare that any real right, whether of the body politic or of the individual, suffers from the Established Church. The attacks upon it are generally made by those who call themselves Liberals, and even "Advanced" Liberals. Surely they might well make an examination of conscience on the matter. I cannot understand how any mind not blinded by religious or—what is quite as common a cause of intellectual cecity—irreligious fanaticism, can fail to discern the vast

amount of good work done by the Anglican Establishment as a liberalizing agency: as a minister of culture, and that of the best kind, which is ethical: as an instrument for the idealizing of life. And unquestionably all this is achieved without the smallest infringement of liberty. No man is obliged to profess the doctrines of the Church of England, or to attend its services, or to subscribe one penny towards its support. To which I add, that no religious communion so peculiarly liberal as the Anglican Establishment has ever existed among men, or is likely ever to exist. Can Liberalism be carried further than in a Church—it is best to give concrete instances—wherein Dr. King, the Bishop of Lincoln, Dr. Ryle, the Bishop of Liverpool, Dean Paget of Christ Church, and Dean Fremantle of Ripon, Canon Fleming of York, and Canon Newbolt of St. Paul's, dwell together in the unity originally created, and still maintained, by Queen Elizabeth's *Act of Uniformity?* Dr. Arnold, in his *Lectures on Modern History*, observes that "we may consent to act together, but we cannot consent to believe together," and argues that the bond of a church "should consist in a common object and a common practice rather than in a common belief;" that the end of its clergy "should be good rather than truth." * Whatever we may think of this view of an

* page 50.

ecclesiastical polity, there can be no question that it is realized in the Established Church of England. And it appears to me that a function of the British State is to uphold that Church as a great factor in the ethical life of the country, an effective agent of moral police.

3. The State and Morality.

But I am here anticipating what I have to say upon the next point: the function of the State regarding morality. No one, I suppose, doubts that the State is vitally interested in the ethical life of the country. National greatness—nay, even national existence—depends on national character infinitely more than on any external causes. And national character is the outcome of individual character: of the characters of the men and the women composing the nation. Assuredly the State should do all that it properly can to maintain and heighten the morality of its subjects. "All that it properly can." It is not the office of the State directly to make men moral. That is impossible. Morality is of the will. It is not a matter of compulsion. "The quality of mercy is not strained." And the same is true of every ethical quality. A power of choice is a condition of virtue. I do not doubt that Milton's masterly argument on this topic in the *Areopagitica* is familiar to most of my readers. But I may be permitted to cite a pregnant passage of it.

"Impunity and remissness for certain are the bane of a commonwealth: and here the great art lies—to discern in what the law is to bid restraint and punishment, and in what things persuasion only is to work. If every action which is good or evil in man at ripe years were to be under pittance, prescription, and compulsion, what were virtue but a name, what praise could be then due to well-doing, what gramercy to be sober, just, or continent? . . . Were I the chooser, a dram of well-doing should be preferred before many times as much the forcible hindrance of evil-doing. For God sure esteems the growth and completing of one virtuous person, more than the restraint of ten vicious."

We may say, then, that the function of the State as to morality, is, first to maintain the conditions necessary for freedom of individual choice, and secondly to encourage the helps and restrain the hindrances to right choice, so far as it can without infringement of that freedom. This is the general principle, although there are cases—they are most rare—in which the State may go beyond it, for the protection of its own supreme rights.

Let me illustrate this principle by three concrete examples. The first two are suggested by the words of Milton: sobriety and continence. There can be no question that the prevalence of the habit of drunkenness in any country is a great national scandal and a great national mischief. I suppose it will be universally admitted to be the right and duty of the State to limit the places and hours at which, and the person to whom, intoxicating liquors may be sold by retail. And the reason, as Mill has well pointed out, is, that

the interest of the sellers of such liquors "in promoting intemperance is a real evil, and justifies the State in imposing restrictions and requiring guarantees, which, but for that justification, would be infringements of legitimate liberty." * But that justification cannot be urged for the legislation demanded by the advocates of what is called "Local Option." Its essence is this: that if the greater number of the inhabitants of a district so choose, they should be able to forbid the sale of intoxicating liquors therein, and to enforce teetotalism upon all who are not rich enough to keep a supply of alcoholic drinks in their own houses. It is difficult to imagine any more flagrant violation of the most elementary liberties of the subject. If such tyranny were attempted by an autocratic ruler—the Sultan of Turkey or the Czar of Russia, for example—all the world would recognize this. But how does tyranny lose its tyrannousness because it is perpetrated, not by one man, but by a number of men? The arguments in defence of it put forward by its most zealous advocates, as accurately set forth by Mill, are, that the traffic in strong drink interferes with a man's social rights; that it destroys his primary right of security, by constantly creating and stimulating social disorder; that it invades his right of equality by deriving a profit from the creation of a misery which he is taxed to

* *On Liberty*, p. 180.

support;* that it impedes his right to free moral and intellectual development by surrounding his path with dangers, and by weakening and demoralizing society, from which he has a right to claim mutual aid and intercourse. Upon which Mill admirably observes, "A theory of social rights, the like of which, probably, never before found its way into distinct language—being nothing short of this—that it is the absolute social right of every individual that every other individual shall act in every respect exactly as he ought; that whosoever fails thereof, in the smallest particular, violates my social right, and entitles me to demand from the Legislature the removal of the grievance. There is no violation of liberty which so monstrous a principle would not justify." † I add that reformed public-houses, such as under the Gothenburg system, or under the high licence system of certain American States, or under a government monopoly, as by the recent great reform in Russia, are by no means in this condemnation. They are legitimate and laudable attempts to fulfil, according to national circumstances, an important function of the State.

Next as to continence. But the question is part of a larger subject—the sexual relations of

* I give this as I find it, but I confess I do not know what it means. The right of equality before the law is the only right of equality that I understand.

† *On Liberty*, p. 161.

men and women. It is a subject in which the State is most deeply interested. Civil society springs from the family. And the family rests upon the chastity of women. It is a true saying that the ethical man is formed at the knees of his mother. The kind of men the country turns out—and that is what the greatness of a country depends upon—will ever be determined by the kind of women a country breeds. The moral tone of a country is decided by women. And their goodness or badness—as our very language witnesses—depends chiefly upon their purity. All feminine virtues are rooted in this one virtue of chastity. Renan's saying is true to the letter: "La force d'une nation, c'est la pudeur de ses femmes."

What, then, is the function of the State in respect of sexual morality? Let us consider its function first with regard to the licit union of the sexes in marriage, and next with regard to their illicit union out of marriage.

There are those—Advanced Thinkers they call themselves—who hold that any interference of the State with marriage, except in certain cases for the enforcement of abortion, or for the punishment of the non-fulfilment of that new duty, is altogether unwarrantable, as an invasion of what they consider individual rights. We are assured by one of the ablest of them that "our present marriage customs and our present marriage law are destined to suffer great changes;" that "it

seems not improbable that, when woman is truly educated and equally developed with man, she will hold that the highest relation of man and woman is akin to that of Lewes and George Eliot," "not a union for the birth of children, but the closest form of friendship between man and woman;" that "in the society of the future a birth will have [that is, will require] social sanction;" and that "in times of over-population, it might even be needful to punish positively, as well as negatively, both father and mother" guilty of allowing "a birth beyond the sanctioned number:" but that for "a non-childbearing woman" "the sex relationship, both as to form and substance, ought to be a pure question of taste, a simple matter of agreement between the man and her, in which neither society nor the State would have any need or right to interfere: "a free sexual union," "a relation solely of mutual sympathy and affection, its form and duration varying according to the feelings and wants of individuals." So Mr. Karl Pearson, in his work entitled *The Ethic of Free Thought;* a misleading title, as it seems to me, for I find in the book no trace of the ethical idea, no freedom save that of "the beast that takes his licence in the field of time," which I hold to be the deepest slavery. But it may be said that these are only the private opinions of the accomplished writer. Turn we, then, to the *Manifesto of the Socialistic League*, published, with annotations,

by its general secretaries, Mr. Belfort Bax and the late Mr. William Morris—surely an authoritative exposition of the principles of the school. We read in that document that "our modern bourgeois property marriage" is to "give place to kindly and human relations between the sexes." And if we inquire what these kindly and human relations are, the annotators tell us, "Under a Socialistic system contracts would be free and unenforced by the community: this would apply to the marriage contract as well as others, and it would become a matter of simple inclination; . . . nor would a truly enlightened public opinion, freed from mere theological views as to chastity, insist upon its permanently binding nature."

It would appear, then, that these sages regard marriage as a mere contract, or rather as less than that; as "a simple matter of agreement," "a matter of simple inclination;" a nude pact, as the jurists say, from which no "action" can arise; from which no rights spring, in the philosophical sense, any more than in the legal sense. Well, marriage is not something less than a contract. It is a contract and something more. Green has correctly pointed this out, though, perhaps, with a superfluity of words, which I shall take the liberty to abridge: "A right arising from contract . . . . is not a right against all the world, but a right as against a particular person or persons contracted with to claim a certain performance or forbearance.

The right of husband over wife, and that of parent over children (or *vice versa*) differs from the right arising out of contract, inasmuch as it is not merely a right against the particular person contracted with, but a right against all the world. In this respect it corresponds with the right of property; but differs again from this since it is not a right over a thing, but over a person. . . . The distinction is not merely a formal one. From the fact that these rights have persons as their objects, there follow important results as to the true nature of the right, to the manner in which it should be exercised." *

"Most important results," indeed, which it would be foreign from my purpose to set forth in detail here. Let it suffice to observe that the only adequate conception of marriage—a conception purely rational and arising from its very essence and ends—is the permanent fusion of two personalities; a conception admirably expressed by the Roman jurist: "Nuptiæ sunt conjunctio maris et feminæ, et consortium omnis vitæ: divini et humani juris communicatio." And the rights springing from this union—rights which do not arise from the sanction of the State, but are antecedent to it, though, of course, implying society in some form—are, like the parental rights so closely connected with them, among the most sacred rights of human nature. It is

* *Works*, vol. ii. p. 536.

assuredly the function of the State to protect and enforce these rights, with all other rights attaching to personality. And it is not easy to overestimate the practical importance of that function. The origin of the State, historically considered, is the family. And the corruption of the family is the dissolution of the State. Horace, lamenting that corruption in the decadent Roman people, spoke the exact truth when he wrote—

"Hoc fonte derivata clades
In patriam populumque fluxit."

It is, then, the office of the State to guard with the most anxious solicitude, and the deepest reverence, the sacrosanct rights arising out of marriage. In every nation under heaven this vitally important institution has received the sanction of religion, the most powerful of all sanctions with the masses of men. And a wise statesman will strive to the utmost to maintain that sanction, while insisting upon the just claims of the State with regard to the secular contract. The religious side of marriage should ever be the more prominent, as a matter of public policy. And here again I may cite certain judicious words of Green: "Though rights, in the strict sense, undoubtedly arise out of marriage, though marriage has thus its strictly legal aspect, it is undesirable that this legal aspect should become prominent [lest the institution should] suffer in respect of its higher moral purposes." *

* *Works*, vol. ii. p. 546.

But, unfortunately, marriage is not the only form of the union of the sexes, though it is the only licit form. What is the function of the State as regards their illicit union out of marriage? The question is of much practical importance, not only from the ethical point of view, with which I am for the moment concerned, but from another, upon which I shall touch presently. One of the notes of the age is a pronounced laxity of practice—and what is worse, of theory—about sexual matters. Nor is it confined to any single class of society. There are too many "young ladies in gilded saloons," as Lord Beaconsfield has it, who discuss, unreservedly, things which their grandmothers would have thought it a shame even to speak of, and who assuredly do not escape moral contamination in most cases, physical in many. Their humbler sisters, in workrooms, in shops, in factories, are not slow to follow their example, and to set little store upon the teaching of the Catechism concerning the duty of chastity. The press daily vomits forth a vast mass of frankly obscene and pruriently suggestive literature and art, apparently designed for the express purpose of stimulating passions usually active enough without artificial irritants. The sexual licence practised in London, and other great cities, increases every year. And I, for one, see no prospect whatever of greater strictness. The signs of the times appear to point in the opposite direction.

One of those signs, so legibly written on contemporary life that none surely can fail to read it, is the prevailing idolatry of physical comfort, of sensuous gratification, of luxurious living. Young men of narrow means, nay of moderate means, are—not unnaturally—averse from marriage, which means for them frugality, self-restraint, self-sacrifice. They are equally averse—as is natural—from mortifying the appetite for the lawful gratification of which marriage was ordained. "Begad, my good ma'am, if you think our boy is a Joseph," says Major Pendennis to the shocked and distressed Helen, who cuts him short, "looking very stately." But the fact, however shocking and distressing, is that an exceeding great multitude of our young men are not as Joseph. Among the virtues which adorn them, cannot be reckoned the one for which that patriarch is specially renowned. They do not shrink from ephemeral connections. They do not disdain "casual fruition." "A fact," the wise Hindu proverb warns us, "is not altered by a hundred texts." Here, too, I suppose, the law of supply and demand applies. And unless you can reconstruct human nature, or revolutionize the conditions of human society, it appears to me that the mistress will more and more take the place of the wife; that sexual promiscuity will become more and more firmly rooted in our civilization.

What, then, is the function of the State in this

matter? There are those who would meet the sexual laxity of the age by changes, more or less far-reaching, in the institution of matrimony. Thus, Mr. Belfort Bax and Mr. William Morris assure us, in the document which I just now quoted, that if what they term "our modern bourgeois property marriage" disappeared, "its necessary complement, universal venal prostitution," would disappear also. As they would abolish pauperism by making all men paupers, so would they abolish prostitution by making all women prostitutes. We may regard these gentlemen as the red revolutionists of our sexual moralities. There are revolutionists of milder types: milk-and-water revolutionists, rosewater revolutionists, we may call them. These are they who, while shrinking from the abolition of marriage, would loosen, in greater or less degree, the strictness of its bond; who would facilitate divorce, would give a recognized status to children born out of wedlock, would rehabilitate the concubine and the courtesan. I suppose M. Alexandre Dumas *fils* is the most highly gifted and the most generally accredited of these "reformers." I own to much admiration for the literary ability of the author of *Le Demi Monde*, *L'Ami des Femmes*, and *M. Alphonse;* but I do not think it worth while seriously to discuss his views on sexual relations. They appear to me mere mawkish manifestations of the ethical limpness of our times. They recall to my mind that profound remark of Carlyle:

"The deepest difficulty which presses on us all, is the sick sentimentalism which we suck in with our whole nourishment, and get ingrained into the very blood of us, in these miserable ages." For myself, I am convinced that the true, the only antidote to the abounding sexual licence of our age is to uphold, in all its severity, the ideal of marriage, holy and indissoluble, which Christianity has impressed upon European civilization. This ideal is the source of all that is highest in the modern family. In whatever degree you tamper with it and derogate from its strictness, you demoralize woman; you degrade the ethical tone of society, which depends upon her as the guardian and priestess of chastity. It was by exhibiting the perfect type of that virtue that the Catholic Church rescued society from a depth of foulness to which it has never since sunk. In this type, and nowhere else, is the rule and norm of purity throughout the ages. Shall I be told that the type is too perfect? Perfection is not a matter of degree. The Christian type *is* perfect, and that is precisely why it suffices. To tend towards perfection is a law of our nature. None save a perfect type will draw us after it—a type to which we may more or less approximate, but which we can never fully realize. The vast majority of mankind ever have dwelt, and ever will dwell, upon the lower levels of humanity. Those elect souls who "scorn men's common lure, life's pleasant things," are

always comparatively few. But it makes all the difference, in any age, of what kind men's ideals are. If they are high, severe—yes, let me venture upon the word—ascetic, common life will be marked by dignity, magnanimity, virility, however grave and numerous the derelictions from the standard commonly recognized.

But—for that is our immediate point—what is the function of the State as to concubinage and prostitution? As to concubinage, the function of the State, in my judgment, is the purely negative one of in no wise countenancing it. I believe the old Roman law was absolutely right in holding "Pater est quem nuptiæ demonstrant," and in declining to recognize paternity where there is no matrimony. The provision of the *Code Napoléon*, based upon that law, "La recherche de la paternité est interdite," appears to me in accordance with the dictates of Right, and the English law of bastardy appears to me opposed to those dictates. Is it objected, "This is hard on the children?" It is hard; but it is in accordance with the universal law of solidarity dominating the frame of things into which we were born, and from which we cannot escape. And if we try to escape, we merely encounter worse evils, and purchase, at our own expense, a confirmation of the truth that—

> "Because right is right, to follow right
> Were wisdom, in the scorn of consequence."

As to prostitution, the case is very different. I do not understand how any one who will look the facts of human life in the face can doubt that Parent-Duchâtelet was well founded when he wrote, "Under forms which vary according to climate and national manners, prostitution remains inherent in great populations; it exists, and always will exist: like those congenital maladies against which experiments and systems of medicine have contended in vain, and the ravages only of which we now strive to limit." * I remember reading in one of the journals, not long ago, of a somewhat prurient prophetess—so she seemed to me—of what she called "social purity," who announced it as her mission "to put down prostitution." The good lady—I forget her name, nor does it signify—going forth on her crusade against the most imperious and indomitable of human appetites, with tract and tea-pot, reminded me of Mrs. Partington going forth with her broom to sweep back the Atlantic. Put down prostitution! Yes, if you can first dry up the springs which feed the swelling ocean of human lust—want and wantonness, laziness and luxury, the enticing vanity of women, and the ebullient virility of men. I add—Can any one, who will clear his mind of cant, doubt that, human nature being what it is, and the conditions of human life being what they are, the putting down of prostitution would be the

* *De la Prostitution dans la ville de Paris*, p. 625.

heaviest blow that could be struck at social purity? St. Augustine, in his profoundly philosophical treatise *De Ordine*, pointed out fourteen hundred years ago, that to abolish courtesans would be to trouble everything with lusts. His words are as true now as they were then; nay, truer. "That unhappy being," writes Mr. Lecky, in a sadly eloquent passage, "herself the supreme type of vice, is ultimately the most efficient guardian of virtue. But for her, the unchallenged purity of countless happy homes would be polluted, and not a few who, in the pride of their untempted chastity, think of her with an indignant shudder, would have known the agony of remorse and of despair. On that one degraded and ignoble form are concentrated the passions that might have filled the world with shame. She remains, while creeds and civilizations rise and fall, the eternal priestess of humanity, blasted by the sins of the people." *

Considerations of this sort should fill us, not only with pity, but with awe. What can be more miserable than the lot of these unhappy women, if we really see it, as it is? All the dignity of womanhood gone; all interests in life, save those of a purely animal nature, extinguished; not even the power of repentance left, in many cases, for a career of animalism has degraded them to the level of the animal, and the moral sense is

* *History of European Morals*, vol. ii. p. 283.

atrophied. No; in place of repentance, merely regrets when their physical charms have faded; when diseases incident to their calling have made a prey of them; when destitution and desolation stare them in the face. "Triste vie que celle que je quitte," says the dying Marguerite Gautier. Sad, indeed; the saddest to which any woman can condemn herself. Fearfulness and trembling may well come upon us, and a horrible dread overwhelm us, when we reflect that here, too, we are confronted with that appalling fact—evil the apparently inevitable condition of good; that here, too, we are brought face to face with that inscrutable law of vicarious sacrifice. It is a profound and heart-piercing mystery, like that of animal suffering; a problem beyond the reaches of our souls.

But, if we pass from speculation to practice, the function of the State seems clear. It is to take cognizance of this monstrous fact of prostitution, to regulate what must practically be regarded as a necessary evil, and to minimize the resultant mischiefs. I am far from asserting that public authority should interfere to prevent women who choose this miserable calling from following it. The cynical excuse of the father of a celebrated American courtesan for his daughter's course of life, "It's a ready-money business, and she likes it," must disgust and dismay us. But certainly, if a woman who has attained an age which authorizes her to decide,

prefers to walk in this broad way which leadeth to destruction, no human power can restrain her. She is at liberty to choose the evil and refuse the good, here, as in other matters. To say this is not, however, to admit "the right of free prostitution"—what a travesty of the word "right"—occasionally asserted; and that, curiously enough, by some who pose as champions of "social purity." The regulation of this evil trade is no wrongful interference with individual liberty, for the criminous commerce is in itself an impediment to social good. It is, assuredly, the function of the State to prohibit the use of our thoroughfares as a mart where public women may follow their vocation; and to enable young men, in whom passion is strongest and reason weakest, to walk abroad without temptation staring them in the face. It is, assuredly, the function of the State to maintain, by due police regulations, order and decency in the parts of music-halls and other places of general resort, where such women congregate, and where those who need them may find them without common scandal and inconvenience;* not to make foolish and futile attempts at excluding them from such rendezvous. It is, assuredly,

* The lines of Horace will doubtless occur to some readers—

"Quidam notus homo cum exiret fornice, 'Macte
Virtute esto,' inquit sententia dia Catonis.
Nam simul ac venas inflavit tetra libido
Huc juvenes æquum est descendere, non alienas
Permolere uxores."

the function of the State, and that in the interests of the unhappy women themselves, to inspect and control the houses in which they are known to dwell together, and to secure their unshackled liberty of departure thence; not, in hypocritical impotence, to make spasmodic raids upon their habitations. All the arguments in favour of the regulation of the drink traffic, apply with far greater force to this. For the sexual appetite is much more deeply rooted in man than the appetite for alcohol. It is part and parcel of human nature—not an artificial adjunct, the product of civilization.

A third matter affecting the moral life of a country, regarding which the State has, as it appears to me, a function, is cruelty to animals. And I wish to say a few words about it here, because the ground upon which that function rests is often misunderstood. We are told that the State should interfere to protect the rights of animals. The unfortunate phrase is likely to prejudice the object of the excellent people who ignorantly employ it. The lower animals have, in strictness, no rights. Capability of right and responsibility for wrong go together. As the Germans put it, man is "rechtsfähig" because he is "zurechnungsfähig." Man is the only being in the world to whom rights and their correlative duties attach. Man alone is a *person* and self-determined. "The condition of making the animal contributory to human good," writes Green, "is that we do not

leave him free to determine the exercise of his powers; that we determine them for him; that we use him merely as an instrument: and this means that we do not, because we cannot, endow him with rights. We cannot endow him with rights, because there is no conception of a good common to him with us which we can treat as a motive for him to do to us as he would have us do to him." * Still, the lower animals are not mere things. They possess that realization of selfhood which is a characteristic of the person. And, therefore, we may properly attribute to them—to use Trendelenburg's happy phrase—"ein Stück persönliches," an element of personality. They are our poor relations, and their very poverty gives them a strong claim on the sympathy—one of the highest ethical emotions—both of individual persons, and of the State which incorporates and represents the personalities of its subjects. Cruelty to them is certainly demoralizing; the more so as it is a singularly cowardly abuse of power. And it is the function of the State effectively to restrain and severely to punish such cruelty, even when practised in the name of science. Torture is an unethical means of investigation, whether in criminal courts or in physiological laboratories.

* *Works*, vol. ii. p. 513.

4. The State and Public Hygiene.

Another matter in which the rights of the State come into conflict with private rights is Public Hygiene. It is a mere truism to say that the State should care for the corporal soundness of its subjects. No one, I suppose, will question its function of insisting upon sanitation; of providing physical training for the young, and healthful breathing-spaces for the masses, in our cities; of promoting cleanliness by means of public baths and wash-houses; of repressing the adulteration of food and drink; of enforcing such preventive measures as medical science prescribes against infectious diseases. Questions of some difficulty may, no doubt, arise as to its best mode of action in carrying out these and the like measures for the general advantage. Unquestionably the State should be on its guard against the tyranny of faddists, who, as is natural in the present empirical condition of medicine, abound among the practitioners of that profession. But there are faddists of another kind, who are equally, or, indeed, more prejudicial to the proper discharge by the State of its function in respect of the public health. There is a certain class of maladies which are not the natural product, but the accidental accompaniment of the promiscuous intercourse of the sexes; maladies which poison the very fount of

generation; maladies more dire in their nature, more malign in their results, than smallpox, or cholera, or typhus. Assuredly it is the duty of the State—the duty is discharged in well-nigh every civilized country but our own—to circumscribe within the narrowest possible limits their baneful activity; to employ all the resources of medical science in order to stamp them out. But No, we are told; the State must not "recognize" vice; it must allow free trade in contagious diseases, lest it should weaken a deterrent from the sin of illicit intercourse. It is a monstrous scandal that in this country the hands of the State are tied by a knot of zealots who thus argue. The excellence of their motives I do not question. But assuredly they are the slaves of a sour and senseless superstition. There is much that is noble and admirable in Puritanism. But, as a matter of fact, it has ever been deeply impregnated with savage fanaticism; it has ever exhibited the ugliest form of the *odium theologicum*. In former ages it endeavoured to deter men from incontinence by the stocks, the whip, the gallows. It no longer wields those weapons. It seeks to employ, instead of them, the more frightful deterrent of disease. Its fanatics are wont to express horror of the spirit of the medieval inquisition. They seem to me animated by a far fiercer spirit. The official inquisitors of heresy in the Middle Ages, at all events, contented themselves with swiftly destroying in

the flames the body of their victim. The amateur inquisitors of incontinence in this nineteenth century are not content with dooming theirs to a worse penalty, the living death of a life-long disease. They inflict it also upon his innocent family; upon his wife, upon his children, nay, upon generations yet unborn.

5. The State and Contract.

A fifth instance of the conflict of the rights of the State with private rights occurs in the sphere of contract. Freedom of contract is unquestionably a precious part of personal liberty, and the function of the State—a very important function—is to preserve and vindicate it. The general principle, clearly stated by the late Sir George Jessel in a well-known case, is that "men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into freely and voluntarily, shall be held sacred, and shall be enforced by courts of justice." * But, as we saw in the last Chapter, this freedom is not absolute. It is a freedom on conditions prescribed by the State for the maintenance of general right. Consider for a moment what a contract is. It is not a mere promise; it is a promise which the State recognizes as binding, and will enforce with all the

* *Printing and Numerical Registering Co.* v. *Sampson* (1875), 19 Eq. 462.

power of the courts. And, so viewed, it is a limitation of a man's freedom. This has been excellently put by Sir Frederick Pollock: "Every person not subject to any legal incapacity may dispose freely of his personal property within the limits allowed by the general law. Liability on a contract consists in a further limitation of this disposing power by a voluntary act of the party, which places some definite portion of that power at the command of the other party to the contract. So much of the debtor's individual freedom is taken from him and made over to the creditor." * When we speak of freedom of contract, we mean freedom to enter into a binding agreement for the diminution of personal liberty. There are many things as to which the State does not permit such freedom. There are well-recognized classes of agreements which the State does not, and should not validate and enforce, however valuable the consideration by which they are supported, however freely and formally they may have been made. Such, for example, are agreements *contra bonos mores*, agreements to oust the jurisdiction of the courts, and many other agreements which are regarded as being against public policy.

Conspicuous among such agreements, should be reckoned those which are tainted by usury: although in these, for the most part, there is not

* *Principles of Contract*, 6th ed. p. 189.

that free consent which is of the essence of a contract, overmastering distress having fettered the borrower's volition. Assuredly, it is the function of the State to repress such pacts, not only through its civil courts, but, in gross cases, through its criminal tribunals. The essence of usury is extortion. It is extortion under colour of law, which is, from an ethical point of view, more heinous, in itself, than extortion by threats, or by physical violence. We are sometimes told—we are often told—that the reprobation of usury as wrong, is an exploded medieval superstition. It appears to me that the principle which guided the philosophers and legislators of former ages in this matter is valid for all time, and that Shylock is quite as noxious in the nineteenth century as he was in the sixteenth; nay, more noxious, for his abominable operations are conducted upon a much wider scale. True it is that the function of money in this modern world is other than it was in the Middle Ages, where other economical conditions prevailed. In those ages almost all farming, or producing, had for its object direct use, not sale; rent, in the sense of a competition price paid for the occupation of land, was unknown; the vast developments of commerce and industry now surrounding us would have appeared the wildest and most fantastic dreams. Money is not now, as it was in earlier periods of civilization, a mere medium of *private*

exchange for the purposes of housekeeping. It is a medium of *commercial* exchange and fruitful lending; it is no longer barren, a thing to be hoarded in cellars and chests. In the mercantile society of modern life commercial credit is an essential factor; and to put money out to interest, in genuine business adventures, is, in itself, not immoral because, in itself, not unfruitful. For what usury really means—this is the definition of the Fourth Lateran Council—is "the attempt to draw profit and increment, without labour, without cost, and without risk, from the use of a thing that does not fructify." And in spite of the change of circumstances, there can be no question of the vast prevalence of usury, thus understood, in our own day; and as little of its malignancy. Leo XIII., who, fully conscious of the responsibilities of his august position, scrupulously weighs his words, speaks, in his *Encyclical on Labour*, of the common people as "devoured" by it. The wretched cultivators in India, in Russia, in Austria, in Italy, in Germany, knew it only too well in its old form: while, in a new form, it appears in the vast incomes nefariously drawn from utterly unfruitful and unprofitable "operations" with stocks, shares, bonds, and, in recent years, even with produce like cotton and wheat, through the system of "options" and "futures." Nor are these the only proceedings of contemporary capitalists which must be reprobated

as essentially usurious; which merit not "a pile," but the pillory. It is a curious instance of the "vast unconscious hypocrisy" which wraps us round, that men who expend much virtuous indignation against the public gambling tables of Monte Carlo, and the private gambling tables of the "hells" in great cities, habitually practise far worse gambling on the Stock Exchange, not for one moment doubting that they are reputable and even edifying members of society.

Here, assuredly, it is the function of the State to intervene, for the protection of individual rights and of its own supreme right. Equally justifiable and, indeed, necessary, is its intervention, in many cases, for the restriction and regulation of industrial contracts. It was the belief of our fathers and grandfathers—I myself was brought up in that creed—that in such contracts the action of private interest should be relied upon as all-sufficient. This was the teaching of the Smithian School of political economists called "orthodox;" and I can well remember the time when even to question it, was to expose one's self to the risk of intellectual reprobation. The fundamental principle of that school was what was termed free, unrestricted, and pure competition, regulating the price of things by the so-called law of Supply and Demand—of human labour among other things; for human labour was regarded as mere merchandise; "die Arbeit

ist eine Waare." The mere invocation of this so-called law was held sufficient to silence all objections to one of the most immoral and pernicious doctrines ever formulated by human perversity; a doctrine which does not recognize man as an ethical being, or the State as an ethical organism; a doctrine of which the root is Atheism and its fruit abortion. I say, "the so-called law of Supply and Demand," for, in truth, it is no law at all; it is merely an account of one of the modes in which human selfishness operates. Nothing is more singular than the unchecked dominion for a century* of this old "orthodox" political economy. It is "one of those delusions"—to borrow the emphatic words of Carlyle concerning another of them—"which sometimes seize upon whole communities of men: no basis in the notion they have formed, yet everybody adopting it, everybody finding the whole world agree with him, and accepting it as an axiom of Euclid; and in the universal repetition and reverberation, taking all contradiction of it as an insult, and a sign of malicious insanity, hardly to be borne with patience." † "No basis in the notion they have formed." This is literally

* So Professor Foxwell reckons: "We have been suffering for a century from an acute outbreak of individualism, unchecked by the old restraints, and invested with almost a religious sanction by a certain soulless school of writers."—*The Claims of Labour*, p. 249.

† *Shooting Niagara and After.*

true. Their so-called "principles" were not "principles" at all; they were merely notions, or, as Professor Cairnes euphemistically puts it, "not positive, but hypothetic truths:" *a priori* conceptions of the intellect, satisfying its mathematical needs, its love of order, symmetry, sequence, but remote from reality. Man, as he lives, moves, and has his being in this concrete world, they disdained to contemplate. The central figure in their speculations was a sort of abstract economic or city man, or rather animal: a mere money-hunting biped, governed solely by the lust of lucre. And the State they regarded as an arbitrary or fortuitous concourse of such animals, bound together by the tie of self-interest. It is hardly necessary, at the present day, to point out that this economic man is as pure, or impure, an abstraction, as the man in a state of nature of whom Rousseau fabled. No such man exists, or ever existed, or ever will exist—not even in the calico millennium of Cobden's Apocalypse. These were the *data* of their pseudo-science, and on these they argued well enough, presenting their demonstrations as "laws;" never heeding the caution conveyed in Pope's verse: "It may be reason, but it is not man;" never remembering that logic, even if applied to established facts, is by no means the all-sufficient guide of life. Their method was described by the late Mr. Peacock, not less tersely than truly: "Premises assumed without any evidence, or in

spite of it; and conclusions drawn from them so logically that they must necessarily be erroneous."

Such was the doctrine of the old "orthodox" Political Economy. And it issued in the establishment of a tyranny of capital of the most atrocious kind, based upon a fictitious freedom of contract. I know of no more shameful page in human history than that whereon is recorded the condition of the English working classes in coal-mines, woollen factories, and cotton factories, during the first three decades of this century. The victims of overwork, of under-pay, of frauds and extortions of all kinds, notably those practised through the truck system, their condition was worse than that of overburdened and overdriven horses: because those *human* faculties, those *human* needs which marked them off from the brute beasts, were utterly ignored and unprovided for. Nay, this is not the worst of it. Not only grown men and women, but little children, were offered up in sacrifice to "Gain, the master-idol of this realm." The story revealed in Parliamentary Reports of 1842 and 1843, of general, deliberate, and systematic cruelty practised on girls and boys of tender age—"cruelty horrible, incredible, unparalleled even in the history of pagan slavery," a high authority calls it—cannot be read without sickening horror. It is curious that the older school of Radicals—Advanced Liberals they had begun to call themselves, as claiming, I suppose, to indicate to their party the way that

it should walk in—looked upon this state of things with indifference: more, would sometimes "bless it and approve it with a text" out of the Evangelists of the old "orthodox" Political Economy. The legislative measures for its palliation were passed—I believe without a single exception—in the teeth of their strenuous opposition.

The first considerable thinker in this country to initiate a revolt against this old "orthodox" Political Economy was Samuel Taylor Coleridge. His clear eyes saw through its fictions, fallacies, and futilities, and he did not hesitate to condemn its doctrines *in globo* as "solemn humbug." * But it is to the German historical school that we must chiefly give the credit of the reaction against what they call *Smithianismus:* the general body of doctrines taught by Adam Smith and his disciples, some of whom departed largely—and, I believe, in every case for the worse—from the original positions of their master. Of this school the learned Roscher may, perhaps, be considered the founder. Its aim is to take men as they really are, belonging to a particular nation, state, and period of history: and "to investigate the laws and the character of the institutions which are adapted to the satisfaction of economic wants, and the greater or less amount of success that they have achieved." † To a member of it, Bruno Hildebrand,

* *Table Talk*, p. 205.

† *Grundlagen der Nationalökonomie*, p. 54.

we owe the well-known work *Die Nationalökonomie der Gegenwart und Zukunft*, perhaps the most trenchant criticism of the Smithian doctrines and methods ever written. It is not necessary, for our present purpose, to catalogue the writers of this school, or to dwell upon the good work done by them generally, or to indicate the excesses of some, led to "mistake reverse of wrong for right." It must suffice here to point out that one issue of the movement has been to overthrow the old doctrine of *laissez-faire*, to bring out the inefficiency of personal interest as the sole rule of economic action, to insist upon the principle that the State, as an organism—and an ethical organism—has a most important function with regard to the industrial contracts of its subjects.

To the apprehension of this principle we owe the long series of Truck Acts, Mines Acts, Factory and Workshop Acts, and the like measures, which have, in some degree, broken down the tyranny of capital. But in some degree only. Let me, on this subject, quote a writer whose words are always accurate, however strong the *sæva indignatio* sometimes underlying them. "Even now," says Mr. Devas, "we see multitudes working inhuman hours, with unremitting toil, for wages seldom sufficient, and often a mockery—working, too, in horrible insanitary conditions, dwelling huddled together in miserable overcrowded rooms; uncertain, under such hard conditions, of finding

employment. And all this wretchedness after thirty years of peace, in the very centre of accumulated wealth and commercial power, in the very seat of world-wide dominion." *

For the redress of these horrors we must look to the ever-deepening apprehension of the truth that side by side with those rights of capital, which the State so efficiently protected by its laws that they became wrongs—and wrongs of the most terrible kind—there are rights of labour which the State is equally bound to protect. I shall touch here upon three of them. The first is the right to real freedom of contract. It is a right which is made void, not only by fraud and by force, but also by paramount and overmastering necessity fettering volition. And in such a case the State, upon which lies the obligation to be "a helper of the helpless," may interfere, and ought to interfere, for the defence of those who are unable to defend themselves. Another case in which its interference is equally justifiable and necessary is where moral relations, extrinsic to the bargain, but of vital importance to the individual and to the community, are bound up therewith. I have specially in view, not only the peculiar needs of women and children, but the duties of the adult male workman, as a husband and a father. I say that in the discharge of those duties, springing from the precedent and sacred

* *Manual of Political Economy*, p. 440.

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contract of marriage, he should be protected as to hours and other conditions of toil, in any mere industrial contract.

A second right of labour is to a fair wage. This is a very different thing from the alleged right of labourers *auf den vollen Arbeitsertrag*, to the full produce of their labour, which is one of the main postulates of Socialism. No such right exists, or can exist, because it practically means confiscation of private property. The produce of labour is not, as Socialists commonly assume, a simple term; it is not identical with the goods apparently produced by a set of workmen. Those goods require many other conditions and antecedents—this arises from the organic nature of society—besides the labour of that set of workmen, who may be getting a full *quid pro quo*, fair wages, a *justum pretium*, although they may earn but a frugal subsistence; although they may, apparently, be docked of a great piece of their *Arbeitsertrag*, of the produce in which their labour issues. This is a truth of cardinal importance; and it supplies the sufficient answer to a demand of Socialists which is at once extremely specious and utterly unethical. Nor must we be led to forget or undervalue it, by the absurd exaggerations of it sometimes made. The conclusion reached by a brilliant, but quite unscientific writer, that manual labourers receive over forty per cent. more than manual labour

produces, is full of fallacies. The same must be said of his premises. The "exceptional ability" to which he ascribes most of the product, does not, as a rule, receive anything like an adequate share of it. An undue proportion goes to the owners of the soil, the machinery, the railways; to otiose capitalists—that is, to capitalists who perform no public duty, who apparently suppose themselves "fruges consumere nati." An insufficient proportion reaches the rank and file of the industrial army. Speaking generally, they do not get their fair share. Nor is this to be wondered at, since the very notion of their fair share has well-nigh disappeared from the public mind. The world has ceased to remember that the labourer is *worthy* of his hire—a *just* hire. It was certainly congruous that Leo XIII., in his *Encyclical on Labour*, should recall to the world this truth, and explain its meaning: "It is a dictate of nature, more authoritative and more ancient than any contract between man and man, that the remuneration of the labourer must be sufficient to support him in reasonable and frugal comfort." That is the measure of the *justum pretium*. And if it is "suspect" to any of my readers as proceeding from one whom, while perhaps not denying his wisdom and knowledge, they regard as the hierophant of a moribund superstition, let me refer them to a very different authority, the present Professor of Political Economy at Cambridge.

In his recent work this learned author, if I rightly apprehend him, recognizes a necessary level, below which wages should not fall.*

Assuredly, Carlyle was well warranted when he wrote, "A fair day's wage for a fair day's work is as just a demand as governed men ever made of governing; it is the everlasting right of men." † It is a right *against the State*; and that for a reason admirably expressed by Prince Liechtenstein in a speech in the Austrian Reichsrath—

"Labour is not merely a matter of the private order; it is a kind of function delegated by society to each member of the body politic. The peasant who cultivates his field, the artisan who works in a manufactory, are, so far as society is concerned, functionaries, just as much as the Government clerk in his office, or the soldier on the field of battle. Industrial labour creates, like every other function, a series of reciprocal obligations between the society which provides it and the worker who executes it."

These reciprocal obligations were universally recognized till the rise of the Smithian School, and I rejoice to see that with the discredit and decay of that school they are again winning their way into recognition by scientific economists—nay, we may say into general recognition. Striking is the confession made by the Irish and Scotch Land Acts that there are cases in which it is the duty of the State to provide for the judicial determination of a fair rent. The principle of these enactments is

* See Marshall's *Principles of Economics*, book vi. c. xii. § 19 (3rd ed.).

† *Past and Present*, p. 84.

equally applicable to wages. I shall have to touch upon that point again, presently, in speaking of strikes. Here let me instance a third right of the labourer issuing from the principle that work is a social function: his right to some public provision other than modified imprisonment in a workhouse, in return for his life of toil, when its evening has come, and he can no longer go forth to his work and to his labour. It is a right recognized by the French *Maisons de Retraite*, and still more by the Austrian *Versorgungshäuser*—institutions which may well make us blush for our "Poor Law Bastilles." I remember some words which seem to me full of wisdom, in a letter of Ranke to Frederick William IV. "The thing the masses most ardently desire is the amelioration of their social condition. We have universal military service. If I may be permitted to say so, he who offers his life to the State deserves to be helped to live; and the soundest political science demands the recognition of that right." In this country—unfortunately, as it appears to me—we have not universal military service; but we have well-nigh universal industrial service, and Ranke's argument appears entirely applicable to those who render it to the community.

There is another result of our present industrial system—a result vitally important to the State—upon which I must touch: the constant recurrence of strikes and lock-outs. Let us consider a

little these portentous phenomena, for so I must account them. I remark, then, in the first place, that they mean the supercession of competition by combination. And, so regarded, they are one of the most significant facts in the world just now. I invite my readers to consider this fact from the point of view of Right.

Now, in the first place, no one can deny that combination is, in itself, perfectly legitimate. Men have a right to combine. It is part of every man's natural right to personal liberty, a right which, of course, is subject to the conditions and limitations indicated in the last Chapter. Men banded together for a common purpose indefinitely increase the power of each for its attainment. I need not dwell upon what is familiar to every schoolboy, or write a dissertation upon the copy-book maxim, "Union is strength." I am at present concerned with industrial combination, and specially with the combinations of workmen usually known as Trade Unions, and the combinations of capitalists, of which the commonest forms are Federations of Employers, Rings, and Trusts.

First, then, as to Trade Unionism. I am old enough to remember—and I am not an old man—when Trade Unions were looked upon as wicked conspiracies for the ruin of capitalists; and, indeed, until of late years, the law of England has so regarded them. It is only recently in this country that combinations to control wages have ceased

to be punishable offences. But, looking at the matter from the point of view of Right, the association of workmen to maintain and advance their interests against their employers cannot, in itself, be condemned: it is a legitimate means for a legitimate end. The undeniable outcome of what the old "orthodox" Political Economy called "free competition" was to lower wages. Too often the competition was not free: and the contracts in which it issued were fraudulent and extortionate towards the workmen. In time they discovered the advantage of collective bargaining over individual bargaining with employers of labour; of combination over competition. And in the extremity of their wretchedness they resorted to Trade Unions as a measure of self-defence. Begun clandestinely, and often maintained by violence, these associations gradually made their way into toleration and recognition; and now they are, we may say, established factors in our industrial system. As to the benefits which have resulted from them, I should like to quote a passage from Mr. Devas, whom—without pledging myself to agreement with him in all points—I regard as one of our soundest authorities on industrial questions. He writes as follows:—

"The benefits which Trade Unions have conferred, or helped to confer, on the English artisans are many: higher wages, shorter hours of work, removal of middlemen (sub-contractors or sweaters), removal of many oppressive fines and penalties, check on brutality of foremen, support to members out of

work. Also they have striven by enforcing apprenticeship and limiting the number of apprentices, to prevent the lack of employment; they have given mental and moral training to their members, teaching them to debate and reason, to act in concert, to make provision for the future; and though they may have caused many more strikes than they have prevented, they certainly have been a prerequisite for boards of conciliation and arbitration for settling all disputes between masters and workmen without any strikes at all." *

Against all this there is, indeed, a set-off. A result of such combinations of workmen is to engender and perpetuate a spirit of hostility toward employers. Mr. Devas tersely puts it: "The common interests of both masters and men remain generally out of sight, while the opposing interests are ever in full view." But further. These combinations of workmen induce a spirit of indifference toward the rights and interests of the community at large. The members of Trade Unions display a tendency, and more than a tendency, to separate in thought and feeling from the rest of the community; a tendency, and more than a tendency, to regard the community as their natural enemy, and to delight in the thought of waging war upon it. Hence the very idea of a common country, with its superior claims and paramount rights, has been effaced from the minds of multitudes. This is a national danger the gravity of which can scarcely well be over-estimated. Further. Surely no one can view without grave regret—the word is all too weak—

* *Manual of Political Economy*, p. 422.

the strikes in which Trade Unionism often issues. Consider, for example, that great Welsh coal strike which, even as I write, is fresh in all our memories. It lasted five months. It inflicted terrible hardships upon a vast number of innocent and helpless families. It kept over one hundred thousand strong and skilful arms out of employ. It compelled the postponement of the naval manœuvres to which so great importance is attached by the highest authorities on our sea forces. It gave an immense impetus to foreign competition with our own trade. And it ended, practically, in the *statu quo:* a vast tragic-comedy, a gigantic *Much Ado About Nothing* played at the expense of many millions. I am very far from denying, I strenuously maintain, that a strike may be quite justifiable. But, even then, it is a rude weapon, causing lamentable suffering to the innocent, and frequently piercing the hands of those who wield it. Of course the criterion of the use and abuse of a strike is simple enough in itself, although its application is usually by no means simple. It is whether the demand, to enforce which the strike is resorted to, is a *just* demand. For here, too, justice rules. And the eventual appeal is to the law of Right.

We must say the same concerning the other methods of Trade Unionism. The end—the advancement of the interests, real or supposed, of the workmen—by no means justifies all the means

which Trade Unions, as a matter of fact, employ. For example, what Mr. Sidney Webb, an ardent defender of them, calls "the device of the restriction of numbers," is surely in many cases —perhaps in most—not only injurious to industrial efficiency, but, as he himself admits, nefarious. A recent writer has called it, not without reason, "both an ethical error and an economical wrong to the State." The maxim, "Sell the minimum of labour for the maximum of wages," is open to just the same exception as the maxim, "Buy labour in the cheapest market and sell produce in the dearest." The restriction of output by workers is liable to precisely the same impeachment as the restriction of output by capitalists. The arbitrary restriction of labour—such restriction is not always arbitrary, it may be reasonable and right—is an ugly and immoral manifestation of human selfishness. And there is a vast amount of evidence that the crushing tyranny of Trade Unions has exercised a most demoralizing effect upon their members. It is a foretaste of the despotism which would be exercised by Socialism, wherewith Trade Unions are largely tainted. I need not pursue this subject further. I will merely quote a striking sentence from Mr. Sidney Webb—

"If any of the methods and regulations of Trade Unionism result in the choice of less efficient factors of production than would otherwise have been used, if they compel the adoption of

a lower type of organization than would have prevailed without them, and especially if they tend to lessen the capacity and degrade the character of either manual labourers or trained workmen, that part of Trade Unionism, however advantageous it may seem to particular sections of workmen, will stand self-condemned." *

It would seem to be beyond question that some of the methods and regulations of Trade Unionism are in this condemnation.

Let us now glance at combination among capitalists. It has arisen in two ways. First, in antagonism to Trade Unions. The combination of capitalists is a weapon forged to combat the combination of workmen. Secondly, it is due to the growing perception by capitalists of the truth that union among themselves is a much better thing for them than competition among themselves; for they may thereby monopolize production, barter, and commerce. The founders of Trade Unionism supposed that the natural relation of capitalists is one of competition, not combination. They were in grave error. The old orthodox Political Economists believed that their "free competition" would make an end of monopolies. They were in grave error too. Their "free competition" has proved to be the beginning of monopolies upon a greater scale than the world had seen before. It has issued in Rings and Trusts. A Ring has been described as "a solid combination of those who

* *Industrial Democracy*, p. 703.

hold commodities against the public which consumes them" — and, we may add, against the workers who produce them. It regulates, on its own terms, production and distribution. It has for its express purpose "to keep up prices, to augment profits, to eliminate useless labour, to diminish risk, and to control the output." A Trust has been defined as "a joint-stock company of corporations," and its object is to annihilate free trade so far as the goods are concerned with which those corporations deal; it means, at best, the painless extinction of the smaller traders; but too often their bankruptcy or suicide. The Trust, it is said, is able to control every avenue of transportation, to undersell rivals, to hinder them from receiving supplies, and from loading or unloading the goods they may have in hand.

Now, are we to say that such combination of capitalists is, in itself, wrong? I do not see on what ground that can be maintained. Capitalists, like workmen, are certainly at liberty to pursue their own interests in the way which they judge best—provided always that way is not unethical. Assuredly there is nothing intrinsically immoral in simplifying the mode of production and distribution. Nay, the substitution of monopoly prices for market prices is not necessarily a change for the worse. Single management effects a vast saving in cost of production, and there are instances in which the development of Trusts has

resulted in the reduction of prices, to the advantage of the community. But Rings and Trusts possess a giant's strength, and they are constantly tempted to use it like a giant. Too often they yield to the temptation—a fact which, human nature being what it is, need excite no surprise. What is certainly wrong is that combinations of capitalists should disregard—as we frequently find them disregarding—all considerations of justice, humanity, and civilization in order to make money. There are occasions on which lockouts are justifiable, just as there are occasions on which strikes are justifiable. But a capitalism which absorbs not only the increase of production, but the wages hitherto required for the sustenance of the workers, must unquestionably be condemned.

The federation of labour and the federation of capital—we have come to that. What is the next step? The fact is pretty clear that machinery, while increasing the product, has, upon the whole, diminished the reward of labour. But ought this to be so? That "ought," please note, is an ethical ought. Well, I do not hesitate to say that it ought not to be so. What is the reason why it is so? The reason is that the reciprocal duties which bind men together in a commonwealth are lost sight of, both in unrestricted competition and in unrestricted combination. It is absurd to suppose that individual freedom is, or ever can be, the sole force by which society is regulated. And that

because of the first principles upon which I have been insisting; that labour is a social function, that property is a social trust, that the rights of property and the rights of labour involve correlative duties. Only in an organized polity is profitable labour possible, is property valid. And this organized polity—the State—may rightly determine, in the interests of the community, on what conditions labour shall be done and property possessed. It is the duty of the State to hold in check the moneyed aristocracy—"the most brutal," Schäffle well says, "in persecuting those who in any way question its domination." It is the duty of the State to break down monopolies when they mean economic slavery, when they interfere with the right of the worker to "eat the labour of his hands." It is, to sum up, the duty of the State, as the profoundest political thinkers of the day are agreed, to cause labour and capital to participate fairly in the profits of increased production, and, in the discharge of this duty, to control, to a certain extent, industrial enterprise. Nay, some of the ablest of living publicists strongly urge that the State should itself direct, or even manage, all undertakings which threaten to become monopolies, and nationalize or municipalize so much of the land, capital, and manufactures of a country as can efficiently be dealt with by it. Am I told that this is Socialism? May it not, perhaps, be the antidote to Socialism? Anyhow,

the Ring and the Trust, little as their authors intend or desire it, are most certainly playing into the hands of Socialism. Irresponsible private despotism may well seem to reflecting men worse than responsible public despotism. "May well seem," I say. For, assuredly, a much stronger case may be stated for the control of production and distribution by public authority, for the public benefit, than for the control of production and distribution by private associations, for private benefit.

But, to return to the point immediately before us. The industrial war waged by means of strikes and lockouts is a national danger of the gravest kind, and a cause of incalculable and unmerited suffering in numberless cases. It is a grievous violation both of the rights of the State and of individual rights. And the function of the modern State is to repress it, just as the function of the medieval State was to put down private war. If I am asked, How? I reply in words which I wrote some years ago—

"By requiring that such disputes between capital and labour be submitted to a public tribunal, consisting of not less than three Commissioners, equal in standing and authority to the Judges of the High Court, who shall have power to determine, in every case brought before them, what is, *hic et nunc*, the *justum pretium* of labour, the minimum hire which it shall be lawful for employers to tender to their workpeople. And, if it be said that the award of such a tribunal could not be made binding upon the workpeople, but only upon the employer, I answer that this is sufficient. It would be enough that a Court

commanding general confidence should declare, 'This is, at present, a just wage; less shall not be given until we order otherwise.' Public opinion, the force of which in such matters is rightly great, would strongly condemn the operatives who, by refusing to accept the rate of wages so awarded, should approve themselves as unjust, and would leave them without pity to the sentence, 'If any man will not work, neither shall he eat.'" *

But the direct intervention of the State is not the only way of dealing with this grave matter. There is also the way of industrial association, which in itself must be accounted a more excellent way. And here the nineteenth century—and the twentieth—might well learn a lesson from the Middle Ages. The Trade Guilds, by means of which, as Mr. Toulmin Smith well puts it, "the principle of association" was then in use as "a living practice of the common folk," † are deserving of much more attentive study than they have generally received. Of course, religion had the first place in their statutes and ordinances. They held, with Plato, that faith in unseen and supersensuous realities was the true foundation of any human community. This age prefers to agree with Macaulay, that for a Joint-Stock Company to attempt to sanctify its personality by devotional exercises is too absurd. Well, that is

* *On Shibboleths*, p. 233. I add that where, as in New Zealand, Trade Unions are incorporated, and able, alike in regard to members and outsiders, to sue and be sued, the enforcement against them of any legal award is comparatively easy.

† *The Original Ordinances of more than One Hundred English Gilds*, Introd., p. 13.

a question which we need not here discuss. The secular object of those guilds was to protect the craftsmen from oppression in general, and from unregulated competition in particular. And whatever may be said against them, it is unquestionable that for centuries they, on the whole, successfully accomplished their object. The effect of the French Revolution was to sweep them away with the rest of the outworn world to which they belonged. And we have nothing to take their place. But certain is it, in the well-weighed words of Professor Ingram, that "the mere conflict of private interests will never produce a well-ordered commonwealth of labour."* Hitze, in his suggestive book, *Die Quintessenz der Socialen Fragen*, describes the economic problem of the day as follows: "To find a social organization corresponding to the modern conditions of production, as the social organization of the Middle Ages corresponded with the simple conditions of production then existing both in town and country." Yes, that is unquestionably the problem. Labour and Capital are now dissociated, nay, are independent, distrustful, hostile: and the longer I live the more deeply I am convinced how entirely right Mill was in holding that for any radical improvement in social and economical relations between them, we have chiefly to look to a regular participation of the labourers in the

* *History of Political Economy*, p. 214.

profits derived from their labour.* Such, I believe, is the best remedy for the healing of the nations, sick well-nigh unto death of this grievous wound in the very heart of the body politic. To promote its application by all prudent means—such means will probably be rather indirect than direct—seems to me not the least important of the functions of the State.

6. The State and the Land.

I go on to a sixth instance of the conflict of public and private rights. What is the function of the State with regard to the land? In considering that question, we must first remember that there is this great difference between the soil and other subjects of property—its quantity cannot be multiplied. Hence it is that a man's ownership of property in land must be regarded as being of a more limited and restricted kind than his ownership of property in chattels. The distinction between realty and personalty which the law of England so emphatically recognizes, is founded in the nature of things; and it is but lost labour that sophists endeavour to rub out that distinction. In an extremely interesting minute, Sir Henry Maine writes, "The suggestion has often been made that real property should be assimilated to personalty, more especially in respect of

* See his *Principles of Political Economy*, book iv. c. vii. § 4.

conveyance. There ought to be no more difficulty, it is said, in transferring a piece of land than in selling a horse. I believe the analogy to be unsound, and the route indicated a false one. There is far more promise in reversing than in extending the principle; in treating land as essentially unlike movables." * The doctrine of the English law that a man can hold only an estate in land, is a perfectly sound doctrine. The principle underlying the feudal system, whence that doctrine has descended to us, that the soil of the country is the common heritage of the country, is a true principle. "The conception of land as an exchangeable commodity, differing only from others in the limitation of supply," † which came in upon the collapse of the feudal system, is a faulty conception; as faulty as the very different conception popularized by Mr. Henry George. The true justification of private property in land, that it is, as a matter of fact, for the general benefit, has been formulated with admirable clearness and succinctness by Aquinas. "If this field be considered absolutely," he says, "there is no reason why it should belong to one man rather than to another. But if it be considered relatively to the opportunity of cultivating it, that presents a certain fitness why it should belong to one man rather than

* *Minutes and Speeches*, p 54.

† See Sir Henry Maine's *Early History of Institutions*, p. 86.

to another." * Private property in land he considers to be just, according to the *jus naturale*, not *in se* and absolutely considered, but relatively to the effects which flow from it. If it could be shown—which, speaking generally, it cannot—that private ownership of land is incompatible with the general good, no effectual defence of it would be possible. And the test whereby the advantage of one land system over another, of the ryotwarry, say, over the zemindary, should be judged, is the advantage of the community.

Such is the first principle governing this matter. And now, to illustrate its practical application, let us consider the land system of [redacted]land. I wonder whether any intelligent pers[redacted] who has not closed the eyes of his intelligence, can maintain that this system ought not, in the public

* The whole passage is worth quoting: "Jus, sive justum naturale est quod ex sui natura est adæquatum vel commensuratum alteri. Hoc autem potest contingere dupliciter; uno modo secundum absolutam sui considerationem, sicut masculus ex sui ratione habet commensurationem ad feminam ut ex ea generet, et parens ad filium ut eum nutriat. Alio modo aliquid est naturaliter alteri commensuratum, non secundum absolutam sui rationem, sed secundum aliquid quod ex ipso sequitur, puta proprietas possessionum: si enim consideretur iste ager absolute, non habet unde magis sit hujus quam illius; sed si consideretur per respectum ad opportunitatem colendi et ad pacificum usum agri, secundum hoc habet quamdam commensurationem ad hoc quod sit unius et non alterius. Considerare autem aliquid comparando ad id quod ex ipso sequitur est proprium rationis, et ideo hoc idem est naturale homini secundum rationem naturalem quæ hoc dictat."—*Summa Theologica*, 2, 2, q. 57, a. 3.

interests, to be largely modified. Built up chiefly by landlords, it sacrifices to their interests in many ways, the just claims of tenants and of the community at large. It enables a man to charge heavily for what is comparatively worthless—land unreclaimed and unimproved; to limit, arbitrarily, the use even of such land; to transfer the chief burden of taxation, which should fall upon the owner of property, to another whose interest therein is his own labour; and to confiscate enhanced values and improvements of all kinds, even expensive buildings, for which the tenant has worked and paid, and in which the landlord has had no part. The English land laws are, in these respects, unique in the world, and contrast most unfavourably with the corresponding provisions of the Civil Law and the Code Napoléon.

Let me not be misunderstood. I am far from denying—I strenuously contend—that the existence of large landed properties in this country is more for the common good than would be the universal prevalence of small real estates. The land is the only basis possible among us of that "directing class"—I do not use the word "aristocracy;" it is misleading; in England, happily, we have no aristocracy—which represents, in a special way, our national traditions; which brings to the service of the commonwealth, leisure, independence, cultivation, hereditary aptitude, qualities of the first importance in public life;

of how great importance the present condition of France may serve to show. I go further; I find in the fact that such properties cannot be kept together without primogeniture, a sufficient defence of that custom.* But, side by side

* I say the *custom* of primogeniture. And here, perhaps, a few words of explanation may be of use to some of my readers. Primogeniture properly means the right of the eldest among males to succeed to real property. That right is of much less consequence now than in ancient times, before alienation of such property by will was permitted. But it is a right which our law still recognizes and enforces where a landowner dies intestate. In such cases, provided that he has not overwhelmed his land by an avalanche of creditors, the law appoints his nearest male relative to succeed him. That is the *right* of primogeniture. The *custom* of primogeniture is a distinct thing, though, no doubt, it arose from the ancient right. The modern custom of primogeniture is a device for keeping a landed property together, or, as the phrase is, tying it up, by means of settlements, during the lives of certain existing persons, and for a period of twenty-one years after their decease. The right of primogeniture seldom arises save in the case of very small properties, for the large ones are almost always settled, and is usually, in practice, a wrong, resulting in great hardship and injustice. My own view is that the argument for abolishing it generally is overwhelming. I think that when a landowner dies intestate, his land should devolve as personal property devolves, except in the case of estates belonging to lunatics or to minors, in whose families the custom of primogeniture has been followed for at least three generations immediately preceding. In these special cases alone the *right* of primogeniture should subsist. In all other cases it should be abolished. That this reform would be for the common good, that it would render the defence of the *custom* of primogeniture easier, that it would be in the truest sense Conservative, seems to me as clear as daylight. And it fills me with unspeakable reflections to see so-called Conservatives

with these large properties, I should like to see, as in ancient times, the smaller estates of yeomen and peasants. The modern mania for uniformity of tenure is one of the worst fruits of that French doctrinairism which has made such lamentable progress among us. Variety of tenure is, in itself, a positive good for this, among other weighty reasons, that it is a factor of individuality. I should like to see an immense increase of small landowners, and I conceive that it is a function of the State by wise legislation to promote this. The most effective safeguard of the rights of landed property is to give every cultivator a chance of becoming a landed proprietor. A bold peasantry—bold because no mere *adscripti glebæ*, but free as existing for themselves and not for another—is not only their country's pride, but a bulwark of their country's security and prosperity.

7. The State and the Social Order.

This Chapter is already longer than I could have wished. But before I close it there is yet another —a seventh—example of the conflict of the rights of the State with private rights, upon which I must touch. It is afforded by what Carlyle used to call "the Condition of England Question." I

resisting it. But *mit der Dummheit!* I may mention that the whole subject has been treated with much learning and ability by Mr. Evelyn Cecil in his work, *Primogeniture: a Short History of its Development in Various Countries, and its Practical Effects.*

think it is Mr. Ruskin who has somewhere observed—and with too much truth—that "our present type of society is, in many respects, one of the most horrible that has ever existed in the world's history: boundless luxury and self-indulgence at one end of the scale, and at the other a condition of life as cruel as that of a Roman slave, and more degraded than that of a South Sea Islander." I came, not long ago, upon a statement by Mr. Joseph Burgess, the late editor of the *Workmen's Times*, that there are usually in this country one million of unemployed, and three millions in want—paupers or semi-paupers. I have not been able to verify the figures. Indeed, they are incapable of exact verification. But even if they are approximately accurate, which I see no reason to doubt, they may well make us pause. With regard to the unemployed, we must, indeed, distinguish. There are those who are unemployed because they are physically or mentally unfit for work. There are those who are partly unemployed, whose occupation is occasional, precarious, insufficient. There are those who are unemployed because, although they desire work and are able to do it, they cannot find it. There are those who are unemployed because they are unwilling, though able, to work; who, unlike the Unjust Steward, *can* dig and are not ashamed to beg. And perhaps this last class is the largest. Mr. Spencer is well warranted in

maintaining, "There exists in our midst an enormous amount of misery which is the normal result of misconduct, and ought not to be disassociated from it." Unquestionably he is absolutely right when he adds, "The notion that all social suffering is removable, and that it is the duty of some one or other to remove it, is simply false." But, as unquestionably, there is much social suffering which *is* removable. And we are bound to do all that in us lies to remove it. That pauperism and semi-pauperism, which is one of the ugliest features in our civilization, seems to me, as a matter of historical fact, largely due to injustice. I shall touch on this point presently. Here let me remark that few, perhaps, really realize the gravity of the mischief which pauperism works. We may say, with strict accuracy, that it is fatal to those rights of personality the defence and enhancement of which is the end of the State: those rights of the individual which we sum up in the one word "liberty." For liberty, we must remember, is a moral good. It is the outcome of psychical endowments, not, as a widely prevalent superstition supposes, the product of ballot-boxes, or the result of a sum in addition. Truly does Wordsworth teach—

> "by the soul
> Only, the nations shall be great and free."

But pauperism crushes the soul out of a man. Pauperism, I say, not poverty, which is a very

different thing, and which the Roman poet rightly celebrates as the mother of heroes.* You will not convert a nation enervated by luxury and debased by pauperism, into freemen, through the most elaborate of paper constitutions conferring the privilege of voting ever so often. This by the way. My present point is that the vast disparity of condition which exists in the social order, the appalling chasm between the extreme wealth of few and the extreme penury of many, is a huge social danger. On the one hand, we have thousands of whom it may be said, in the words of Mill—he is speaking of a certain class of landlords, but his remarks may properly have a wider application—"they grow richer, as it were, in their sleep, without working, risking, or economizing;" on the other, millions too truly described by episcopal lips as "not so much born into the world as damned into it." This is, in itself, a gigantic evil. It is not merely that so many vast fortunes are the outcome of fraud and extortion, of wrong and robbery, whereby speculative

* I need hardly refer to the familiar and noble lines—

"Regulum, et Scauros, animæque magnæ
Prodigum, Pæno superante, Paulum,
Gratus insigni referam Camæna,
Fabriciumque.

"Hunc et incomtis Curium capillis
Utilem bello tulit, et Camillum,
Sæva paupertas, et avitus apto
Cum lare fundus."

financiers, company promoters, "smart" traders, sweaters of all sorts—the varieties are many—Panamists, and *exploiteurs* of various kinds, have "made their pile." It is also that too great inequalities, too violent contrasts in the distribution of wealth, are contrary to the true law of the social organism, signifying abnormal development in one part, anæmic shrinking in another. Who can doubt that a remedy must be found for "the shame of mixed luxury and misery which is spread over our native land"?

As we all know, Socialism proposes a remedy. Mr. Burgess, whom I quoted just now—one of the most moderate of its prophets—advises the masses to "go up and possess the Promised Land, where there will be no unemployed, no rich, and no poor." The advice is specious. Let us consider it a little. A few words on Socialism will be here very much in place. But we are confronted at the outset by a difficulty. Socialism is a very Proteus, possessing almost as many aspects as exponents. Professor Luigi Cossa truly observes that it "includes a rather heterogeneous number of groups, which are named according to the aims they have in view, the means they propose to use, the manner in which they hold together."* The professor is also well warranted in his complaint that "classification has a hard road to travel when it enters the

* *Introduction to the Study of Political Economy*, translated by Louis Dyer, p. 514.

tangle of jarring Socialistic sects." It will not be necessary, for our present purpose, to enter upon that tangle. For, after all, these jarring sects are agreed upon one first principle which has from the beginning been the distinctive note of Socialism, as a glance at its history will be sufficient to show.

I suppose for the germ of it we must go back to a well-known passage in Rousseau's *Discourse on the Origin of Inequality.* But its first set exponent appears to have been the Abbé Fauchet, who in the early days of the Revolution delivered orations at a club called the "Cercle Social," and edited a journal entitled *La Bouche de Fer.* He insisted "that all the world ought to live; that everybody should have something and nobody too much:" and denounced "the wretch who desires the continuance of the present infernal *régime,* where you may count outcasts by millions, and by dozens the upstarts (*les insolents*) who possess everything without having done anything for it." The eloquence of the Abbé, who had become a constitutional Bishop, was cut short by the guillotine in 1793. Another of these primitive Socialists was Marat, who pleaded in the *Ami du Peuple:* "Either stifle the workpeople or feed them. But how find work for them? Find it in any way you like. How pay them? With the salary of M. Bailly." Bailly, it will be remembered, was the patriot mayor who floridly harangued poor Louis XVI. at the barrier of Passy, congratulating the wretched

monarch upon being "conquered by his people," and was himself put to death three years afterwards by the same "people," with circumstances of revolting cruelty. Chaumette, too, praised by Mr. John Morley as showing "the natural effect of abandoning belief in another life by his energetic interest in arrangements for improving the lot of man in this life," * urged that, though "we have destroyed the nobles and the Capets, there is another aristocracy to be overthrown—the aristocracy of the rich." The poor had the same gospel preached unto them by Tallien, who demanded "full and entire equality," and insisted that "the owners of property should be sent to the dungeons as public thieves;" by Fouché, afterwards Duke of Otranto and Police Minister to the First Napoleon, who maintained that "equality ought not to be a deceitful illusion;" that "all citizens ought to have a like right to the advantages of society;" and by Joseph Babeuf, who exchanged his Christian name for Caius Gracchus: "Pourquoi vouloir me forcer à conserver St. Joseph pour mon patron?" he explained; "je ne veux pas les vertus de ce brave homme-là." He sought to realize his doctrines by a conspiracy, and was executed for his pains by the Directory. But perhaps the most memorable of these pioneers of Socialism was Brissot de Warville, for it is to him that we owe the famous formula

* *Miscellanies*, vol. i. p. 78.

about property and theft: "la propriété exclusive c'est le vol," was the original text of it. For sixty years the dictum lay buried and forgotten in Brissot's not very meritorious work, *Recherches Philosophiques sur la Propriété et sur le Vol.* There Proudhon discovered it, and made it current coin in the shortened form, "La propriété c'est le vol," appropriating it, however, without acknowledgment; perhaps, M. Janet conjectures,* in virtue of the right, alleged by Brissot, of everybody to everything.

This is the corner-stone, elect, precious, upon which all Socialism rests. The literature of the subject is immense, and is rapidly growing every day. Herr Stammhammer, in his *Bibliographie des Socialismus*, enumerates some five thousand works more or less immediately dealing with it; and the catalogue is by no means complete. But whatever diversities of operation the prophets of Socialism exhibit, in all worketh one and the self-same spirit. All bring, in effect, the charge against such of us as have property—that we are thieves. That is the head and front of our offending. The substance of their indictment against us is, "Property is theft." Is this true?

Perhaps there is much more truth in it than is pleasant for us to think about. Certainly, it is not true of property in the abstract. That, I trust, has been sufficiently shown in previous pages of

* *Les Origines du Socialisme Contemporain*, p. 95.

this work. But what if we consider property in the concrete? All but Socialists will, I suppose, agree that private property, in its original idea, is the guarantee by the State to the individual of the fruits of his own labour and abstinence. But can any one deny that a great deal of it, as it exists, in fact, is largely the result of theft and worse offences, whereby its owners and their progenitors have appropriated the fruits of the labour and abstinence of others? To take this country only, how many noble houses derive their abundant possessions from the ruthless spoliation of the religious foundations under Henry VIII.: foundations which, whatever else they may or may not have been, were so many centres, throughout the land, of Christian charity—a very different thing from Poor Law relief; which were, in a true sense, the patrimony of the poor. "To the rapacity of that aristocratic *camarilla* of adventurers," as Professor Rogers writes,* surrounding the nonage of Edward VI., we owe the destruction of the thirty thousand religious guilds which had been the great institutions of thrift and self-help—"the benefit societies of the Middle Ages," the Professor calls them—and the foundation of English pauperism. Or, to come down to our own time, certain it is, in the well-weighed words of Mr. Chamberlain, that "the vast wealth which modern progress has created has run into pockets;" that

* *A History of Agriculture and Prices in England*, vol. iv. Pref.

"the great majority of toilers and spinners have derived no proportionate advantage from the prosperity which they have helped to create." But to withhold that "proportionate advantage," or share which is justly theirs, is to wrong them, or, in plain English, to rob them. And, unquestionably, by such wrong and robbery, a vast amount of existing property has been heaped together, and is kept together.

It would seem, then, that there is an unpleasant amount of truth in the indictment brought by Lazarus against Dives. The answer commonly made is, that however unethically the wealth may have been gained, of which his purple and fine linen, his sumptuous fare and gorgeous palaces, are the emblems, he has kept "the windy side of the law," and therefore must not be meddled with. Let us hear Herr Lasson expound the argument: "Existing property is lawful: otherwise it might be assailed in the courts of law. It has all been gained under the authority of legislation. Who could presume to separate the just from the unjust in what is all conformable to law? It is the very business of law to cut short this untenable thinking and deeming about right. . . . The principal and most important thing is that we should recognize the sacredness of existing property, for with it all law-abiding, all civilized life would fall."* We may doubt whether Lazarus

* *System der Rechtsphilosophie*, p. 609.

will find that a very conclusive argument. A rejoinder to it is suggested by the Duke of Argyll in an interesting page of one of his most interesting works. "Any law which gives to one set of men a right to live on the industry and property of others, starts, of necessity, a spirit of idleness and imposture on the one side, and not less certainly evokes a spirit of suspicion and resistance on the other." * This judicious observation is directed against the old English Poor Law. But probably Lazarus will consider it no less applicable to dukes than to paupers. He may even find in it a justification for viewing with sinister eyes the class described by Burke as "those who hold large portions of wealth without any apparent merit of their own." And thanks to the remarkable political arrangements now existing in the greater part of the civilized world, Lazarus, in his millions, is our master. Nor is it surprising if he turns a willing ear to those who promise him, in exchange for his vote, the transformation of his material condition by drastic legislation on proprietary rights. When I was last in Paris a song which declared, with a significant disregard of grammatical nicety—

> "Ce n'est pas toujours les mêmes
> Qu'aura l'assiette au beurre"

was very popular among "the masses." It set me thinking. As a matter of historical fact, property has always followed political power. But this is

* *The Unseen Foundations of Society*, p. 562.

the first time in the world's annals that power has been lodged in the hands which now hold it. And the quantity of butter is limited.

I shall have to return to this subject in a subsequent Chapter. Here I should remark that however well founded Socialism may be in its criticism of the evils of the existing social order, the remedy which it proposes for them necessarily involves infinitely worse evils. For Socialism, like Pauperism, is fatal to those rights of personality which are summed up in the word "liberty." The very essence of despotism, whether it be the despotism of the one or of the many, is, as Aristotle has pointed out, that it is "tyrannously repressive of the better sort." But no system which the brain of man has ever devised carries that tyrannous repression so far as Socialism. Liberty —let me repeat what I have said in an earlier Chapter—means the power of a man to make the most and the best of himself; to develop fully his personality. And however private property may have been abused, it is, in itself, realized liberty. It is essential to the development and maintenance of personality in this work-a-day world. It is requisite for the very existence of the family. But Socialism, if true to its principles, means the confiscation of private property, the destruction of the family, and the annihilation of individual freedom. It proposes to remedy what it calls—not altogether without reason—the slavery of labour,

not by vindicating the liberty of the labourer, but by establishing a system of universal servitude. This monstrous proposal we are bound to resist, even, if necessary, to the shedding of blood. And to the shedding of blood the matter is not unlikely to come in the long run. For Socialism is rather a sect than a party. Its votaries are animated by a spirit akin to that of religious enthusiasm. They are largely of the stuff of which martyrs are made. Assuredly the privilege of sealing their testimony with their blood should be withheld from them as long as possible. But it may not be always possible. And, as assuredly, the preservation of civilization is of far more account than are the lives of fools and fanatics, few or many.

The real value of Socialism lies not in its preposterous proposals and unrealizable Utopias, but in this: that it is, what Professor Ingram has well called it, "the inevitable and indispensable protest of the working classes, and their aspiration after a better order of things." And, assuredly, it is a function of the State to "extract from the interminable popular and philanthropic utterances constituting Socialistic literature the underlying ideas, and to translate them into scientific conceptions of Right." *

* *Das Recht auf den vollen Arbeitsertrag in geschichtlicher Darstellung*, von Anton Menger, p. 3. I may refer my readers who desire practical illustrations, to an excellent Chapter in Mr. Devas's *Manual of Political Economy* (p. 458), wherein nine important economic reforms needed by Great Britain and Ireland are clearly and cogently stated.

CHAPTER V.

THE MECHANISM OF THE STATE.

THE truth that civil society is an organism—a truth specially needful to be insisted upon at the present day—must not make us forget the truth that it is also a mechanism. "The tendency to political life," writes Bluntschli, "is found in human nature; and so far the State has a natural basis: but the realization of this tendency has been left to human labour and human arrangement."* The question to be considered in this Chapter is, What are the true principles on which that tendency should be realized? What is the right arrangement of the State?

The Mechanism of the State is, of course, a very large subject, including, as it does, every provision for the right discharge of their public duties by rulers and ruled. One great first principle, recognized by all publicists from Aristotle downwards, is that there should be a well-marked separation between its several powers.

* *Allgemeine Staatslehre*, p. 18.

The Aristotelian division need not detain us here, for it applied to a very different stage of political evolution. In the existing state of society the classification so widely popularized by Montesquieu, is well-nigh universally recognized as indicating the true method. No one will deny that the legislative, the administrative, and the judicial provinces ought to be kept well apart. No one will deny the necessity for the independence and dignity of the judiciary, for the responsibility of public officials in respect of their public acts, for the equality of all before the law, for the provision of such securities for the liberty of the subject as the writ of *habeas corpus* and trial by jury afford in the country. I add that although all this is admitted in theory, it is not easily realized in practice. The history of the century which has passed away since Washington's death amply warrants the caution conveyed in his Farewell Address: "The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism." *

"Whatever the form of government"—which, indeed, is, in itself, a matter of less importance than the spirit in which the institutions of a country are worked. Without adopting Pope's opinion, "Whate'er is best administered, is best," it may be safely asserted that there is no

* *The Writings of George Washington*, vol. xii. p. 226.

immutably best form of government; that what is best for one age and one condition of civilization may be worst for another. The best form of government for a people is that best fitted to the elements of which it is composed, to the period of its development, to its local habitation and historic traditions. The rights of the subject may be amply secured under a monarchy or an aristocracy: they may be trampled under foot in a democracy. That is certain, if any lesson of history is certain. Of course, it does not in the least follow that the form of government is a matter of indifference. The accommodation of the mechanism of the State to the exigencies of any given condition of society, is one of the gravest problems of practical statecraft. We live in an age when representative government, or self-government, is generally recognized—to quote the words of Mill—as "the ideal type of the most perfect polity, for which, in consequence, any portion of mankind are better adapted in proportion to their degree of general improvement." * The most highly civilized nations are, as a matter of fact, supposed to be now adapted for it. The topic to which we will confine ourselves in this Chapter is, What are the first principles on which such government should be framed?

* *Considerations on Representative Government*, p. 70.

And first let me notice, very briefly, a conception of representative or self government which is most common and most erroneous—a conception which reduces it to a sum in addition. We are told that it consists in assuring the preponderance of the greater number of the votes of men—that is, of the opinions expressed by their votes. "Opinions!" Pray, what is the worth of the individual opinion of the average voter upon any political subject? And how can it gain in value if multiplied by millions? Mr. Lorimer, in his interesting book, *The Constitutionalism of the Future*, relates that "a very learned and ingenious friend" of his "believes the political capacities of all men who can read a penny newspaper to be equal." It appears to me that if a man can believe that, he can believe anything. It is the very fanaticism of doctrinarianism. And of what avail is it to argue with fanatics? Let us leave them their liberty of foolishness, merely stipulating that, in return, they leave us our liberty of common sense. The individual opinion of the average voter upon the efficacy of the coarser kinds, whether of the spirituous stimulants supplied at the public-houses, or of the spiritual stimulants supplied by the Salvation Army, may be entitled to respect. But who that is not given over to a strong delusion to believe a lie, can really value his individual opinion upon any problem affecting the interests, especially the larger and remoter interests, of the common-

wealth? Nay, he is seldom the best judge even of his private interests in matters to which the one or two rules ordinarily governing his understanding do not extend. If the preponderance of the greater number of opinions were the true account of self-government, then self-government would stand condemned by its intrinsic absurdity.

But it is not the true account. Let me proceed to indicate what the true account is. The principle upon which self or representative government rests, appears directly deducible from the nature of civil society as an ethical organism. As I observed in the First Chapter, the ideals of Right which constitute the absolute jural order, whence positive law derives moral and rational validity, are binding upon the conscience of the State, as such, just as they are binding upon the conscience of the individual, as such: they are the fundamental principles determinative of the proper construction of a polity; and of them the ideal of justice is the first, and embraces, in some sort, all the others; whence the dictum with which we started, and which must ever be borne in mind, that justice is the foundation of the State: "Justitia fundamentum regni." And what is justice but, as the old Roman jurisprudent defined it, "the constant and perpetual will to render to every man his right"? (*jus suum*). Now, in the organization of the State the problem is to assure to each subject that political right which is really his. It has been

shown in the Third Chapter * that a man, as an ethical being in an ethical organism, is entitled to some share, direct or indirect, of political power—a share correspondent with his personality. And personality varies vastly from little more than zero upwards. There is a true sense in the Carlylese doctrine that the mights of men are the rights of men. Character, race, fortune—yes, and all the forces which constitute the individual—ought to have free play. Human freedom, as Aristotle defines it, means belonging to one's self and not to another. And this implies the right of every man to be valued in the community for what he is really worth. Political inequality springs necessarily from men's inequality as persons. To sum up in words which I have elsewhere used: "In so far as men are in truth equal, they are entitled to equal shares of political power. In so far as they are in truth unequal, they are entitled to unequal shares of political power. Justice is in a mean—it lies in the combination of equal and unequal rights." †

In a civilized community, then, we find vastly varying individualities; and the more civilized it is, the greater is the variation. We find also, as a result of those varying individualities, a number of classes and interests, diverse but dependent upon one another, and all necessary to the perfection of the body politic. Hence the

* See pp. 47, 48.

† *On Shibboleths*, p. 104.

necessity for what Schäffle calls, in a sufficiently uncouth phrase, indeed, "eine gliederungsmässige Territorial-und Berufs Vertretung;" the due representation of the local and professional interests and capacities of the commonwealth is, I take it, what he means. This is a matter of great importance, and is discerned to be such by the chief political philosophers of our age. Krause and Ahrens, Mohl and Bluntschli, among the Germans, have expounded it more or less fully; and M. Prins, one of the most eminent of Belgian publicists, has discussed it with much force in his remarkable work on *Democracy and Representative Government*. Even Proudhon, who excelled in appropriating the ideas of others and in clearly enunciating them, qualifies the merely mechanical system of representation by equal and universal suffrage as "mystification" and "tyranny," and demands for every social and political element in the nation its proper influence. "La représentation nationale," he writes, "là où elle existe comme condition politique, doit être une fonction qui embrasse la totalité de la nation dans toutes ses catégories de personnes, de territoire, de fortunes, de facultés, de capacités et même de misère." * I take these to be the words of truth and soberness, although they proceed from the pen of Proudhon.

* *Théorie du Mouvement Constitutionel au dix-neuviéme Siècle*, p. 101.

A representative government, then, as its very name implies, should represent all the elements of national life, all the living forces of society, in due proportion. All should be subsumed in the reason of the organic whole. Schiller well insists that just because the State is essentially an organization formed by itself, and for itself, it can be actually realized only in proportion as its constituent parts have brought themselves in harmony with its true idea.* And its true idea is that it should be a city at unity with itself; the unity of diverse activities working, each in its own mode, for the common good, under the law of Right. Mirabeau happily said, "Les assemblées représentatifs peuvent être comparées à des cartes géographiques qui doivent reproduire tous les élémens du pays avec leur proportions, sans que les élémens les plus considérables fassent disparaître les moindres." †

This is the true ideal of representative or self

* Aber eben deswegen, weil der Staat eine Organisation sein soll die sich durch sich selbst und für sich selbst bildet, so kann er auch nur insoferne wirklich werden, als sich die Theile zur Idee des Ganzen hinaufgestimmt haben.—*Ueber die ästhetische Erziehung des Menschen.* Vierter Brief.

† Compare Trendelenburg. "Bleibt es die Aufgabe einer gerechten Verfassung die Bestimmungen des Grundgesetzes immer in ein proportionelles Verhältniss zu den gegebenen und aufstrebenden Machtstellungen zu bringen."—*Naturrecht auf dem Grunde der Ethik*, § 205.

government. And if we are asked, How is it to be realized? the answer, as I intimated just now, is, That is a problem not so much of political science, or of political philosophy, as of practical statecraft, which must be differently worked out in different countries and at different periods. We should remember that it is not a new problem. Many popular speakers and writers, who might, perhaps, be fairly expected to know better—Members of Parliament, newspaper publicists, "et hoc genus omne"—are in the habit of talking and writing as if representative government were a distinctly modern institution. In fact, it is by no means a modern institution. It prevailed in one form or another—we need not go back further for our present purpose—throughout medieval Europe. It disappeared, almost everywhere except here, in the Cæsarism which was the political expression of the Renaissance, although its vestiges, its ruins, were to be found in most Continental countries until the last decade of the last century. Then the torrent of the French Revolution swept them away, and, for good and evil, renewed the face of the earth. The essential characteristic of that medieval regimen was that it represented groups, classes, institutions; as in England, the Lords Spiritual and Temporal, the counties, cinque ports, boroughs, and universities. It was based upon local interests and divisions. It was, Bishop Stubbs tells us, "an organized collection of the

several orders, states, or conditions of men . . . recognized as possessing political power;" * in other words, of all the political factors of a people.

In England, this species of representative government prevailed down to the passing of the first Reform Act. That the old unreformed House of Commons—to speak merely of that chamber—was truly representative, is not, I suppose, now denied by any competent authority. The Duke of Wellington — who, although no political philosopher, was "rich in saving common sense," beyond, perhaps, any other man who has made a name in English history—declared that unreformed House to be not only "the most efficient legislative body that has ever existed," but also "as *complete* a legislative body as can be required." This was in a speech in the House of Lords in 1831. And in addressing the House in 1832 he further expressed himself in the same sense—

"We have, under the existing system, the county representation, and the representation in cities and boroughs. The county representation consists, principally, of freeholders, and the members for counties represent not only the lower classes, but the middle and higher orders. The representatives for the great maritime towns, and for the larger description of towns in the interior of the country, represent, likewise, the lower and middle classes. The representatives for the pot-walloping boroughs, for the scot-and-lot boroughs, and for the single borough of Preston, where the franchise is vested in the inhabitants at large, represent the lowest orders of the people; and in

* *The Constitutional History of England*, vol ii. p. 163.

this manner this borough representation represents all classes and descriptions of persons who have anything to do with the business transacted in the House of Commons."

A very different authority, Mr. Bagehot, in his extremely interesting essay on the Unreformed Parliament, has put forward the same view. "It gave," he tells us, "a means of expression to all classes whose minds required an expression." * And again, "The English Constitution of the last century, in its best time, gave an excellent expression to the public opinion of England;" † the reason why this was so being indicated in a dictum of Sir James Mackintosh—its date is 1818—which he quotes: "A variety of rights of suffrage is the principle of the English representation." The Reform Act of 1832 changed all that, and introduced a new era in English political life. On this I shall have to dwell in the next Chapter.

Of contemporary attempts on the Continent of Europe to solve the problem of representative or self government, three may fitly be noticed here. One of the most interesting is that made in the Kingdom of Prussia. The members of the Prussian House of Representatives (Abgeordnetenhaus) are chosen by universal suffrage. But the suffrage is indirect and unequal. Property, and the bearing of public burdens, as well as mere numbers, are taken into account. The House of Lords consists of a

* *Works*, vol. iv. p. 397. He adds, "The representation of the working classes then really existed" (p. 398).

† *Ibid.*, p. 383.

number of nobles who sit there by hereditary right, of certain great officers of State, and of life peers appointed by the King, some *proprio motu*, others upon the nomination of the universities and the thirty-eight principal cities. In the election of that very important body, the Kreistag—the chief organ of local administration—the suffrage is not universal; and plural voting prevails, in recognition of the principle of a balance of the various provincial interests, so that no one of them shall preponderate over the others.* The provinces of Prussia, it should be remembered, are not, like the French departments, arbitrary and artificial districts, but historical territories. In Austria, the Lower Chamber of the Reichsrath is elected by four classes of voters, organized in a sort of system of estates, in which the franchise varies from what is practically manhood suffrage † to a somewhat high property qualification in the class of great landowners. In the Upper, some of the members sit by hereditary right, others by Imperial nomination, and with them are joined all the Archbishops and Bishops possessing princely status in the kingdoms and countries represented by the Reichsrath. But as the powers of the Austrian

* Not the least important of Prince von Bismarck's achievements was the remodelling of the local government of Prussia, by a series of laws enacted between 1872 and 1883, and having for their main object the separation of local from general administration.

† Men in domestic service are excluded from it.

Reichsrath are largely limited by the privileges vested in the Provincial Diets, it is a less important body than it at first sight appears.* In Belgium, according to the constitutional revision of 1890-93, persons possessing "general capacity, civil rights, and full age (twenty-five)," are entitled to one vote in elections for the Chamber of Deputies. A second vote is accorded to men of thirty-five who are householders and who pay a small specified tax on their house, and to men of twenty-five of greater wealth; and those who possess certain educational diplomas, or who have occupied positions implying a higher education, have a third vote. This system was introduced to provide an antidote to the mischiefs found to result from the equal and quasi-universal suffrage previously existing. It applies to elections, not only for the Lower Chamber, but for the Senate. A certain proportion of the members of that body are directly chosen by the general electors in the several provinces, according to population. From these Senators a pecuniary qualification is required. It is not required from another class of Senators, who are chosen by the provincial councils. Princes of the Royal House are Senators in their own right. To criticise the

* The same must be said of the German Reichstag, elected by direct universal suffrage, which, fortunately for Germany (see p. 207), has practically no control over the administration, and not a great deal over legislation; the parliamentary system not existing in the German Empire.

Belgian plan of multiple voting is, of course, an easy task. Why graduate the suffrage from one to three? Why the ages of twenty-five and thirty-five? Why fix the property and educational qualification for extra votes as they have been fixed, and not otherwise? Why, indeed! I suppose the only answer is, that age, headship of a family, property, and education ought to count; and that it is better for them to count according to the rough-and-ready process of the Belgian constitutional revisionists, than not to count at all. No doubt the system proposed by Professor Lorimer in his *Constitutionalism of the Future*, under which one voter might be endowed with twenty-five votes, is theoretically far more perfect. Still, in proceeding tentatively—haltingly, if you will—in this grave matter, the Belgians have proved themselves worthy descendants of their wise ancestors whose liberties they inherit. Their practical sagacity in politics presents a remarkable contrast with the speculative folly of their French neighbours.

For in France, and in the countries which have framed their political institutions upon the French model, representative government cannot properly be said to exist. The French system—which I shall have to consider further in the next Chapter—is not an organic, but an atomistic system. The only element in the national life of which it takes account is mere numbers. For the

representation of other elements far more important in the body politic, it makes no provision, not even in its Senate. As little can the French system be said to secure self-government. In the individual man, self-government means the supremacy of the intellectual nature over the sensitive; the predominance of the moral over the animal self. The lower powers and faculties of a self-governed man are brought into subjection, and kept in subordination, to the higher. And so he realizes his proper end as a rational being. I may add that in such self-government resides the highest part of liberty, which is ethical; according to that admirable dictum of St. Basil: "Who is free? He that is his own master." This is the true account of self-government by the individual man. It is also the true account of self-government by a nation of men. For the State, in the words of Schiller, "is the objective, and, so to speak, normal form in which the manifoldness of the subjects seeks to combine itself into a unity;" * or, as Browning puts it—

> "A people is but the attempt of many
> To rise to the completer life of one."

The rule of that completer life, for a people as for one, is reason; not the individual reason, but the abstract reason. The man "who to himself is a law rational," alone realizes the true idea of self-government. We must say the same of a nation.

* *Ueber die ästhetische Erziehung des Menschen.* Vierter Brief.

Manifestly the man who is carried about by every storm of passion, by every wind of impulse, by every gust of emotion, is not self-governed. Nor is the State that is so swayed. But in every commonwealth numbers—the masses, as the phrase is—represent passion, impulse, emotion. And the country which is dominated "arbitrio popularis auræ" is no more self-governed than is a ship without rudder or steersman. The politics of the people is very like the justice of the people. Blinded by terror or maddened by hate, they seize a suspected person and hang him on the nearest telegraph post. Their lynch law dispenses with inquiry, evidence, proof. So in their politics, passion, impulse, emotion, take the place of ratiocination, knowledge, justice. Passion, impulse, emotion, no doubt have their proper office in the State, as in the individual man. But whether in the individual man or in the State, they must be subjected to the only rightful law-giver and governor—Reason. It is one function of political parties to be the organs of passions, impulses, emotions; and I need not observe how important a part such parties play in the modern State. Of course, they are no new phenomena in history. They are, in one form or another, as old as human society. There is in man—we may see it exemplified in every schoolboy—an innate tendency to take sides. "Party feeling," Sir Henry Maine well says, "is one of the strongest feelings acting on

human nature." It is, he thinks, "probably far more a survival of the primitive combativeness of mankind, than a consequence of conscious intellectual differences between man and man." * However that may be, there can be no doubt that, as Bluntschli argues at length in a thoughtful work,† not, I believe, much known in this country, political parties are indispensable to the working of representative institutions, as instruments of that mobility in persistence which is the condition of life for the political as for the physical organism.

It will be well, therefore, to say here a few words regarding political parties as they exist in this age, and of the party government in which they issue. The original home of party government is England, whence other countries have adopted it, with more or fewer changes. It is the product of a very peculiar set of circumstances in English history. North, in his *Examen*,‡ gives a very amusing account of the origin of the terms "Whig" and "Tory." It seems that "Tory" was a nickname first applied to those who opposed the Bill for the exclusion of the Duke of York in the Parliament

* *Popular Government*, p. 31.

† *Character und Geist der politischen Parteien.*

‡ Page 371. A pungent, but partisan account of the difference between Whigs and Tories is given by Swift in No. 35 of the *Examiner*.

of 1679. According to North, the word originally denoted "the most despicable savages among the wild Irish," and was applied to the Duke's partisans "because the Duke favoured Irishmen." "Being," North adds, "a vocal clever-sounding word, readily pronounced, it kept its hold," and "the anti-exclusionists were stigmatized, with execration and contempt, as a parcel of damned Tories, for divers months together." Then, "according to the common laws of scolding, the Loyalists considered which way to make payment for so much of Tory as they had been treated with, and to clear scores." After essaying various repartees, they at last hit upon "Whig," "which was very significative, as well as ready, being vernacular in Scotland for corrupt and sour whey. And so the account of Tory was balanced, and soon began to run up a sharp score on the other side." "This," North affirms, "fell within my own personal knowledge and experience."

The names thus originally used as invectives, were gradually adopted by those to whom they were applied. And from the close of the seventeenth century, the two great parties designated by them are prominent factors in English public life. It was not, however, until the accession of the House of Hanover, that party government, in the proper sense of the word, was established. William III. and Anne both set themselves persistently against it. William naturally relied

chiefly upon the political leaders who had been most active in raising him to the throne. Yet he never renounced his preference for a mixed ministry, composed of moderate Whigs and moderate Tories, between whom, probably, he saw no great difference;* and during almost the whole of his reign he succeeded, in some degree, in attaining it. Indeed, as Hallam quaintly puts it, he "was truly his own minister, and much better fitted for the office than most of those who served him."† Anne, though her own personal leanings were to the Tories, by no means desired, as she expressed it, "to be their slave;" she wished them to predominate in her counsels, but not to monopolize power, and to reduce her authority to a shadow. "Her plan was, not to suffer the Tory interest to grow too strong, but to keep such a number of Whigs still in office as should be a constant check upon her ministers."‡ After her death the conditions of government were greatly changed. It was inevitable, Hallam thinks, that the Whigs should come exclusively into office under the line of Hanover; and George I.'s ignorance of England and English disqualified him from presiding over the deliberations of his ministers, after the manner

* So Pope:

"In moderation placing all my glory;
While Tories call me Whig, and Whigs a Tory."

† *Constitutional History of England*, vol. iii. p. 292 (8th ed.).

‡ Sheridan's *Life of Swift*, p. 124.

of his predecessors, and reduced the monarchy to the shadow of a great name. The Sovereign "was no longer the moderating power, holding the balance in a heterogeneous and divided Cabinet, able to dismiss a statesman of one policy and to employ a statesman of another, and thus in a great measure to determine the tendency of the Government. He could govern only through a political body, which, in its complete union and in its command of the majority in Parliament, was usually able, by the threat of joint resignation, which would make government impossible, to dictate its own terms." *

Such was the beginning of the system of party government which is with us to this day, and which has been so largely imitated throughout the civilized world. It is not necessary, for the present purpose, to trace in detail its vicissitudes during the well-nigh two centuries that it has existed in our country. The broad fact is, that through all that tract of years, England has been really ruled by successive juntos of politicians, whose title to office has been that they could command a majority in the House of Commons. The influence of the Crown has, of course, been more at one time and less at another. Had George III.'s ability been on a level with his character, he might, not improbably, have

* Lecky's *History of England in the Eighteenth Century*, vol. i. p. 227.

recovered much of his lost prerogative, and have vindicated for himself an authority similar to that now exercised by the Prussian monarch. He failed in the attempt; and succeeding British sovereigns have been content to reign without governing. "The reputation of public measures," wrote Junius in 1770, "depends upon the minister who is responsible; not upon the king, whose private opinions are not supposed to have any weight against the advice of his council, and whose personal authority should therefore never be interposed in public affairs. This, I believe, is true constitutional doctrine." For a century that doctrine has been universally accepted, and the real governing power in England has been an informal Committee, not of the Legislature, as is sometimes said, but of the party able to command a majority in the Lower House of the Legislature.

This is party government as a fact in English history, where, as Bluntschli observes, it has been more clearly exhibited than elsewhere. Let us now briefly consider the theory upon which it rests. Perhaps the first apologist for it—certainly the first considerable apologist—is Burke. "Party" he defines as "a body of men united for promoting by their joint endeavours the national interest upon some particular principle in which they are all agreed." He argues that such "connexions in politics" are "essentially necessary for the full performance of our public duty:" because

"where men are not acquainted with each other's principles, nor experienced in each other's talents, nor at all practised in their mutual habitudes and dispositions by joint efforts in business, no personal confidence, no friendship, no common interest subsisting among them, it is evidently impossible that they can act a public part with uniformity, perseverance, or efficacy." He continues :—

"Therefore every honourable connexion will avow it is their first purpose, to pursue every just method to put the men who hold their opinions into such a condition as may enable them to carry their common plans into execution, with all the power and authority of the State. As this power is attached to certain situations, it is their duty to contend for these situations. Without a proscription of others, they are bound to give to their own party the preference in all things; and by no means, for private considerations, to accept any offers of power in which the whole body is not included; nor to suffer themselves to be led, or to be controlled, or to be overbalanced, in office or in council, by those who contradict the very fundamental principles on which their party is formed, and even those upon which every fair connexion must stand. Such a generous contention for power, on such manly and honourable maxims, will easily be distinguished from the mean and interested struggle for place and emolument. The very style of such persons will serve to discriminate them from those numberless impostors, who have deluded the ignorant with professions incompatible with human practice, and have afterwards incensed them by practices below the level of vulgar rectitude." *

Let us turn from this fine rhetoric of the most accomplished thinker that ever adorned English political life, to a publicist of a different school and age and nation, Herr Bluntschli: a thinker

* *Works*, vol. ii. p. 335.

of a far lower order, but careful, candid and conscientious, although, no doubt, theological prejudices sometimes cloud his judgment. His little work, *The Character and Spirit of Political Parties*, of which I spoke just now, is not, indeed, a masterpiece of political science: but it is the best-reasoned exposition of the subject with which I am acquainted, and may, in some sort, serve, according to his design, as "the physiological key" to it.

Herr Bluntschli begins by laying down the proposition that, wherever there is free movement of political life in a State, political parties appear; and that the richer and freer such life is, the more sharply and clearly defined are the lines of party. Political parties, he insists, are not, as so many narrow and timid spirits suppose, a perilous evil, a disease of the body politic, but are, on the contrary, a condition and a token of sound public health: the necessary and natural manifestation and outcome of the mighty inward springs (*Triebe*) of national existence. He next goes on to consider the true nature of a political party. In the first place, he reminds us that it is, as its name (*pars*) implies, only a portion of a greater whole. It contains the consciousness of merely a part of the nation, and must not be identified with the totality, with the people, with the State. Again: parties are not limbs (*Glieder*) in the political organism; they are free and voluntary associations of

individuals, who, by reason of a common feeling and judgment, associate themselves for common public action. Of political parties, properly so considered—"natural political parties," he sometimes terms them—Herr Bluntschli allows four; Radicals, Liberals, Conservatives, and Absolutists or Ultra-Conservatives; and he considers, at some length, the characteristics and functions of each of them. We need not follow him in detail through this interesting discussion, but I may observe that, founding himself upon an ingenious speculation of Friedrich Rohmer, he finds in the psychological law, ruling the stages of human life, the key to the spirit and character of political connexions.* In Radicalism we see the love of ideals, often unreal and unpracticable, the delight in abstractions, the thirst for novelty, the disdain of experience, which characterize youth. Liberalism corresponds with the period of early manhood which has put away childish things and the illusions of fancy, when the more developed understanding (*Verstand*) discerns facts as they are, and traces their connexion; and which, desiring and striving for their amelioration, avoids "raw haste, half-sister to delay." "The love of freedom is most eminently seen in the young man, who, having outgrown the authority of tutors and governors, now, for the first time, thinks and acts independently, proving things for himself, and doing freely what is suited and fitted

* p. 84.

to him. That is also the most forcible characteristic of all true Liberalism. But," adds Herr Bluntschli, "the Liberal knows well that freedom is not a coin which circulates from hand to hand; that it is the revelation and development of a personal faculty." Conservatism he describes as less sparkling (*weniger glänzend*) than Liberalism, but as making a firmer, more durable, and more solid impression; as like the fully developed man of from thirty to forty, not so intent upon the acquisition of new possessions as upon the preservation and improvement of things already gained. The specially characteristic ideas of Conservatism, our author tells us, are Piety (*pietas*), Loyalty, and Law (*das Recht*). But its starting-point is the real; it goes on from the reality to the idea. "The true Conservative does not shut his eyes to the claims, the advance, of all innovating time; he merely insists that the movement towards the future shall respect the conditions of the past." * Absolutism, or Ultra-Conservatism, is the political counterpart of unproductive and unreceptive old age. The ideas proper to it have neither the splendour of youth, nor the fulness of wisdom, the depth of feeling, characteristic of perfect manhood. They are lacking in virility. They are of a somewhat feminine type. Peace and stability are wont to appear to it the highest good.

* p. 138.

Such, in briefest abstract, is Herr Bluntschli's account of the four "natural political parties." He points out that in practice they tend to coalesce into two, Radicals and Liberals forming one, and the dual Conservatism the other. They all express tendencies and faculties of the body politic; they all have their proper function in the State and in the Parliament which, I suppose, he would agree with M. Fouillée in considering (although he does not use the expression) a sort of national brain ("une sorte de cerveau national"). Constitutional government he regards as depending upon their proper working and due balancing according to the exigencies of the age.

No doubt one of the most valuable offices performed by political parties is to watch and criticize the conduct of the Government.* It is a truth so trite as long ago to have become a truism, that there is always in human nature a tendency to abuse power. The fact that every act of an administration is liable to discussion and censure in Parliament, is a valuable check

* Mr. Chamberlain, in a very suggestive speech, delivered at Oxford on the 7th of May, 1890, claimed for the party system the merit of "securing an exhaustive criticism, an examination into all new measures; of affording a stimulus, and even a healthy stimulus, to individual ambition and to the ingenuity of rival politicians." But he went on to admit—and the admission is most significant—that "when great national interests are at stake, when the safety of the commonwealth is involved, the party system breaks down."

upon that tendency. Obviously, such discussion and criticism may be, and often are, carried too far. It is easy for a party to sink down into a faction, and it is often extremely difficult to distinguish the one from the other. Herr Bluntschli imputes this difficulty to the looseness and uncertainty of ordinary language.* He tells us, however, in effect, that a faction is a degenerate party, and is as salt which has lost its savour. A political party, he insists, should be animated by a political principle, and follow a political object; combinations representing nationalities, or religious convictions, or class interests, he terms "spurious" parties. The word "political" he takes to mean resting on the State, in unison with, not opposed to, the State, and serving the common welfare. Political parties may display unwisdom, both as to the ends they follow and the means they employ, without ceasing to be properly parties. But when they place themselves above the State, and subordinate public interests to their own interests, then they cease to be parties, in the true significance of the word, and become factions. And that brings him to what he considers the distinctive mark of a faction, which is this: that instead of seeking to serve the State, it seeks to make the State serve it; that it follows not political—that is, commonly beneficial (*gemeinnützliche*)—but selfish ends. "If," he further

* p. 9.

insists, in an emphatic passage, which concludes his discussion of this point—"if party zeal and party passion become so overmastering that parties would rather tear the country to pieces than join hands for its delivery and welfare, if a party abuses the public authority of which it has gained possession, unjustly to oppress and persecute those who do not hold with it, if parties combine with a foreign enemy against their own country and the nation to which they belong,—then so unpatriotic a course expels the essential idea of a political party, and the party becomes a faction." *

We must allow that the political history of England during the present century, exhibits more than one instance of the degeneracy of party into faction. It also illustrates forcibly another evil incident to the system of self or representative government, as worked by political parties. The true function of a Parliament is not to administer, but to watch and supervise the administration. There is, as Mill points out, "a radical distinction between controlling the business of government and actually doing it." † It is the tendency of representative bodies, driven by the forces of party interests—which, if analyzed, often prove to be private interests in disguise—to ignore that distinction. Indeed, such bodies afford, at the present day, the most signal manifestation

* *Ibid.*, p. 12.

† *Considerations on Representative Government*, p. 89.

of the "spirit of encroachment," spoken of by Washington in the warning words cited a few pages back. The House of Commons, Lord Beaconsfield wrote in *Sybil*, presents, on "studious inspection, somewhat of the character of a select vestry, fulfilling municipal rather than imperial offices, and beleaguered by critical and clamorous millions." It is time, high time, that the House of Commons should lose that character. The true principle has been enunciated with equal terseness and force by Mill. "The Parliament of a nation ought to have as little as possible to do with local affairs."

"It is but a small quantity of the public business of a country [he further observes] which can be well done, or safely attempted, by the central authorities; and even in our own government, the least centralized in Europe, the legislative portion at least of the governing body busies itself far too much with local affairs, employing the supreme power of the State in cutting small knots which there ought to be other and better means of untying. The enormous amount of private business which takes up the time of Parliament, and the thoughts of its individual members, distracting them from the proper occupations of the great council of the nation, is felt by all thinkers and observers as a serious evil, and, what is worse, an increasing one." *

But this is not the only evil springing from the management of local affairs by the Imperial Legislature. Another, and perhaps a greater evil, is that it impairs those habits of independence of thought, of self-reliance, of self-control in a

* *Considerations on Representative Government*, p. 266.

people, which are alike the chief factors and the chief guarantees of civil and religious liberty.

So much concerning the office of political parties in the mechanism of representative or self government, as existing at the present day. It remains to speak of the function of the chief of the State in such a regimen. A chief of some sort there must be, whether he hold the supreme magistracy for life or for a term of years. In him is personified that sovereignty which is the fundamental idea of the State, however great the limitations of his prerogative in the exercise of it. Limitations, again, there must be, for the very idea of self or representative government is incompatible with the idea of an autocratic ruler. A first function of constitutions, written or unwritten, is to prescribe those limitations.

It may not be amiss to observe here, that limited or constitutional monarchy is no more the creation of modern times than is representative or self government. For example, we find such monarchy at the very beginning of English history, in the year 493, when, according to the Chronicle, "the two ealdormen, Cerdic and Cymric his son, came to Britain and became Kings of the West Saxons." Descendants of Woden though they claimed to be, they were by no means absolute rulers. The type of kingship which they introduced into this country, differed, in most important particulars, from

Roman Cæsarism. The selection of the Sovereign from among the members of the Royal House belonged, both in form and substance, to the Witan. To the Witan belonged also the power, in grave cases, of deposing him. The advice and consent of the Witan was necessary to the validity of his laws. Great as were his privileges and prerogatives, he was hedged in, on all sides, by constitutional restrictions. "Cerdic of Wessex, the fierce Teutonic chief, out of whose dignity English kingship grew," was as truly a limited monarch as is his far-off descendant, our present gracious Sovereign.*

Perhaps it is among the chief achievements of England in practical politics—that field where she has won so many magnificent triumphs—to have worked out the true idea of modern constitutional monarchy; to have assigned to the Throne its proper place in the representative or self government of the age. And although this is, of course,

* No doubt the Norman Conquest brought a considerable accession of royal authority. But William the Conqueror professed to stand in the same position as Edward the Confessor, whose chosen heir he claimed to be. Nor was it an empty profession. He set himself to rule as an English king, binding himself at his election and coronation by the accustomed oaths; and, upon the whole, he observed them fairly well. The feudalism which he brought with him, no doubt introduced a disturbing element into our constitutional history: and under his immediate successors the distinctively English idea of kingship was largely obscured. But it was never lost. It is the corner-stone upon which the existing edifice of our political liberties rests.

the realization of first principles, it has not been effected by any conscious employment of them. It is the natural outcome of constitutional development, "the long result of time." British monarchy has grown into its present form "occulto velut arbor ævo," ever manifesting that adaptation to environment which is a chief law of life. And I think it exhibits one of the most striking examples in all history of the successful fitting of old institutions to new needs. I suppose the maxim, "The King reigns, but does not govern," expresses accurately the function of a limited Monarch. It is easy enough to burlesque that type of kingship. "Supreme Majesty, with hypothetical decorations, dignities, solemn appliances, high as the stars, tied up with constitutional straps so that he cannot stir hand or foot for fear of accidents" *—such is Carlyle's mocking account. But the fact that this kind of monarchy commended itself as the fittest to Lord Chatham, who stands so high among his heroes—"a clear, sharp, human head, altogether incapable of falsity" —might have led him to doubt whether it is altogether disposed of by his flouts and gibes. In practical politics Lord Chatham is certainly a better authority than Carlyle; and Chatham doubtless discerned that this theory of kingship, while it left the Sovereign indefinite freedom for good, effectively minimized his power for evil.

* *History of Frederick the Great*, vol. vii. p. 146.

"The English," wrote Montalembert in his book, *The Political Future of England*, "have left to Royalty the pageantry (*la décoration*), the prestige of power: they have kept for themselves the substance of it." The pageantry and prestige surrounding the British Throne are manifest. As manifest is their utility in the mechanism of the State. It is a saying of the First Napoleon, "You can govern man only through the imagination: without imagination he is no better than a brute." This is true generally. It is especially true of Frenchmen. And perhaps the absence from the Third Republic of all that appeals to the imagination, in some degree explains the anarchical animalism now prevailing in France. Imagination is a faculty absolutely necessary to *human* life. It is at the basis of civil society. Emotions are called forth by objects, not by our intellectual separation and combination of them. Mere abstractions and generalisations do not evoke feeling. Loyalty, by which I mean devotion to persons, springs eternal in the human breast. And nowhere is it more eminently seen, more beautifully displayed, than in the Teutonic races. In Englishmen there is innate a veneration for the men and women in whom the institutions of the country seem—so to speak—embodied in visible form. But that is not all. The moderating, controlling, restraining, guiding influence exercised by the British Sovereign is assuredly most real and most

important—more real and important than, I think, Montalembert realized—although, from the nature of things, it is usually most hidden. And here I am reminded of a story of St. Thomas Aquinas being consulted concerning the election of an Abbot. The choice lay between three. "Describe them to me," said Aquinas. "What manner of man is the first on the list?" "Most learned," was the answer. "Well, let him teach." "And the second?" "Most saintly." "Good; let him pray." "And the third?" "Most prudent." "Ah that is your Abbot; let him rule." Now, the virtue of prudence, the first and most essential qualification for a ruler, as this great thinker discerned, is unquestionably more necessary to a constitutional Sovereign than to any other. The duties of limited monarchy are among the most difficult and delicate that can devolve upon any human being. They are also of singular complexity when the Monarch is, so to speak, the central principle—*anima in corpore* is Aquinas's phrase—of a vast and widely spread political mechanism, such as that united under the British Crown. Of this unity the Crown, let us remember, is not merely the type and symbol, but also the efficient instrument. It is the binding tie

> "That keeps our Britain whole within herself,
> A nation yet: the ruler and the ruled."

And here we may note a cogent argument for the descent of the Crown in a princely family.

Bishop Stubbs, discussing the reasons which led the Saxons to vest the sovereignty in the House of Cerdic, observes: "A hereditary king, however limited his authority may be by constitutional usage, is a stronger power than an elective magistrate: his personal interests are the interests of his people, which is, in a certain sense, his family: he toils for his children, but in toiling for them he works also for the people whom they will have to govern: he has no temptation to make for himself or them a standing-ground apart from his people." * The Bishop is writing of the sixth century. His words are just as applicable to the nineteenth, and will be just as applicable to the twentieth. And the reason is that they express fundamental truths of human nature—first principles which are not of an age, but for all time. They are not only a justification for the institution of hereditary monarchy, but for its continuance in those lands "of old and settled government" which are fortunate enough to possess it.

But further. The British Crown is something more than the centre and instrument of national unity: it is the effective pledge of moderation and longanimity, of uprightness and honour in public life. We have only to turn our eyes to other nations to realize that this is so. Two examples may suffice: one from the Old World, the other from the New. Look at France. Thrice during

* *Constitutional History of England*, vol. i. p. 67.

the last century she has been a republic, and always with the same result; immeasurable corruption, undisguised intolerance, the ostracism of men of light and leading, the sway of political adventurers of the lowest type; a republic twice—well-nigh thrice—ended by a Saviour of Society and a military despotism. It is only under the monarchy, whether of the elder or younger branch of the restored Bourbons, that tranquillity, decency, and the enjoyment of rational liberty were obtained by her. Or think of Brazil, as she flourished under the mild sway of her accomplished Emperor, the one country in South America where the true end of the State was kept in view. And then consider her as she now is, sunk to the infamous level of the neighbouring republics, the happy hunting-ground of bankrupt desperadoes who have reduced the art of government to the art of pillage. I remember an occasion when a Radical Member of the House of Commons was volubly contrasting, much to our disadvantage, our political institutions with those of the United States, regarding the practical working of which, however, he seemed to know singularly little. When his eloquence had ceased to flow, I turned to a distinguished American scholar and statesman whose face I had been watching with some amusement, and said, "Well, what do *you* think of benighted Britishers?" He replied, "O fortunatos nimium sua si bona norint." I could extract nothing more than that from the diplomatic lips. And perhaps it was enough.

CHAPTER VI.

THE CORRUPTION OF THE STATE.

It is the constant peril of the State that its authority should be misused for the exclusive or undue promotion either of individual or of class interests. Evidently, if this happens, whatever be its form—whether, to follow the Aristotelian classification, preponderating power be vested in one, in a few, or in the many—its true end, the maintenance and amplification of public and private rights, in general, is, more or less, defeated. When, in the place of that end, the advantage of the ruler, or ruling class, is solely, or unduly pursued, it becomes what the philosopher calls a perversion (*παρέκβασις*). The Monarch is converted into a Tyrant, the Aristocracy into an Oligarchy, the Democracy into an Ochlocracy. But of these three varieties of the corruption of the State, the last is incomparably the worst. It is the most corrupt, the most cruel, and the most costly, while, as Schiller warns us, it is suicidal by reason of a law arising from the nature of things—

"Der Staat *muss* untergehn, früh oder spät,
Wo Mehrheit siegt und Unverstand entscheidet."

And here the philosophic poet does but sum up the teaching of the world's wisest thinkers. Not only "Aristotle and Polybius," but all the great masters of political science, have regarded "the democracy of numbers as the final form of the degeneracy of all governments." * This degeneracy, or corruption, as it exists in the present day, is our topic in the present Chapter. It is the prevailing disease of the body politic in the most civilized nations; the *morbus democraticus* of which they are sick, some of them well-nigh unto death. Let us first inquire into the genesis of this kind of Democracy; next, let us judge it in its principles and in its working; and, lastly, let us consider the various remedies proposed for its evils.

Now, Modern Democracy is the direct issue of the French Revolution. So much will be admitted on all hands. But what is the essence, the inner meaning of the French Revolution? A chain of moral causation runs through the ages. No great event in the life of nations, in the history of the world, is isolated. Every present is necessarily the outcome of all the past. Yes; there is a sovereign

* See Mill's *Dissertations and Discussions*, vol. iii. p. 65.

necessity issuing from the nature of things—*inexorabilis Fatorum necessitas*—which shapes the course of history irresistibly, irrevocably, not to be changed by any human power. This is not Determinism. It is the truth which Determinism veils. And it is a truth quite compatible with that other primary verity that the human will is free, not absolutely, but relatively, and largely guides the destined succession of events. The French Revolution, then, not to ascend further the stream of time, was the inevitable reaction in the political order against the movement vaguely called the Renaissance, which we may take to have culminated between the years 1453 and 1527—the dates respectively of the fall of Constantinople and the sack of Rome. Whatever else the Renaissance was or was not—and it was much else—it most assuredly was a return to Pagan absolutism. This I have shown elsewhere* at length, and I may be permitted to refer my readers thither, for a justification of what I here advance. The Renaissance cannot be summed up in the formula, "a new birth unto liberty." It might with as much truth be called a new birth unto servitude. This it was, assuredly, both in the political and the economic order. The notion of irresponsible and unlimited lordship (*dominium*), whether in government or in wealth, was alien to the medieval mind. Let it not be supposed that I have any sympathy

* See my *Chapters in European History*, vol. i. pp. 254–297.

ith the religious romanticism which paints he Middle Ages as a period of seraphic sweetess. I know too well the dark side of their istory for that. But certain it is that civil uthority and private property were regarded then s essentially limited and fiduciary; as subject to he moral law and the rights of the community. n politics, as in economics, the influence of the enaissance was simply de-ethicising. It laid loose he reins upon the neck of monarchical despotism, nd upon the neck of private cupidity. Kings hroughout Europe, as military organization adanced, cast away the cords of provincial and unicipal franchises, which, throughout the meieval period, had more or less effectively restrained hem; the rights and liberty of the subject were o longer heard of; the maxim of Pagan Cæsarism —"Quod principi placuit legis habet vigorem"—nce more became the first principle of rule. And s the world grew rich, and capital assumed a form nd an importance quite unknown in the earlier rdering of society, the old belief that wealth was eighted with duties, that it was a trust rather han a possession, grew dim; and the wealthy sserted, ever more and more confidently, their ight to do what they would with their own. The rench Revolution, as I have observed in the hird Chapter, was a protest for the natural and mprescriptible rights of man, political and ecoomical, in an era when the very conception of

such rights seemed to have almost disappeared from the public mind. It meant the death of Renaissance Absolutism, and the birth of Modern Democracy.

There is a pregnant remark of Mill's that the *philosophes* usually saw "what was not true, not what was." And this saying is as applicable to the men who led and shaped the French Revolution, and whom the *philosophes* had trained. The immediate problem before them was the redistribution of political power. The great bulk of the people had been nothing in the *ancien régime*. That the Revolutionary legislators justly discerned to be wrong. Proceeding to "mistake reverse of wrong for right," they decided that the masses should be everything in their brand-new polity. Those long debates which occupied the mind of France for so many months before the meeting of the States-General, as to how the voting should take place in them, raised a question the real gravity of which none of the disputants, probably, perceived. How should they have perceived it, utterly unversed as they were in true political science, and crammed full of the sophisms of Rousseau and the Social Contract? The real issue was this: whether the legislature and the government should represent all the constituent elements of a nation, or merely one class—the numerical majority. The world's great thinkers who had preceded the Revolutionary era, from

Aristotle to Aquinas, from Aquinas to Spinoza, had taught the theory of the public order insisted on in the last Chapter—that due weight and influence should be given, according to their importance, to all the jarring elements of human society, the undue preponderance of any being obviated. As we saw, this was done in the Middle Ages—roughly indeed, but as effectively as that stage of civilization allowed—by the representation in the National Councils of the Estates of the Realm. It is perfectly true that in 1789 the nominal Estates of the French monarchy were little more than titular. The division of Spiritualty, Nobility, and Commonalty by no means sufficed as a classification of the elements which then made up the combination and subordination of civil life in France. Hence, no doubt, the comparative ease with which, as Burke expresses it, "the three orders were melted down into one." The practical effect was to throw all political power into the hands of the *Tiers*, with its double representation. It was the victory of a merely mechanical or arithmetical principle in the political organism, the principle of counting heads: the principle which has found most recent expression among ourselves in the shibboleths, "One man one vote;" "Equal electoral districts;" "Every man to count for one; no man for more than one:" the principle which M. Arthur Desjardins has summed up in a

pregnant sentence: "that the will of the greater number shall prevail, even if in error, over the will of the most intelligent of minorities." *

And this principle is the very primary note of Modern Democracy. It is the characteristic which chiefly differentiates it from all that the world has hitherto known by that name, and which led Mill to designate it "False Democracy." † The fundamental position of contemporary Radicalism is that all adult men—and perhaps women—in a country should be politically equivalent; and that supreme political power should be exercised by the majority of them—that is, by delegates chosen by the majority and paid to do its bidding. It is a doctrine which by no means commended itself to British Liberals of the older school—to speak, for the moment, of them only—and which is almost passionately disavowed by Mill, unquestionably the greatest of them. For myself—it is always best to be frank—I cannot pretend to be satisfied with the political philosophy of that eminent man as a whole, although I find much in it of unspeakable value. Like all his philosophy, it is vitiated by the Benthamism which dulled his fine intellect and darkened his generous

* See his very able article, "Le Droit des Gens et la loi de Lynch aux État Unis," in the *Revue des Deux Mondes*, May 15, 1871. It must not be supposed that M. Desjardins is an admirer of this kind of democracy.

† *Considerations on Representative Government*, p. 146.

heart. I search his pages in vain for any real apprehension of the primary verity that the State is an ethical organism, rooted and grounded in those eternal principles of Right which constitute the moral law—a verity confessed by the world's greatest political teachers, from Plato and Aristotle to Kant and Hegel. How should he have really apprehended it, when his ethical doctrine is purely empirical, based on calculations of profit and loss, on "the conviction," from which, as he tells us, he "never wavered," "that happiness is the test of all rules of conduct and the end of life," * and devoid of the fundamental, aboriginal, indecomposable idea of justice as a divine order ruling through the universe?

But, however inadequate Mill's mechanical conception of the social organism, he saw clearly that the Jacobin conception, in which, as he expresses it, "exclusive government by a class usurps the name of democracy," † is more inadequate still. He warns us that "if the constituency were made co-extensive with the whole population, the majority, in every locality, would consist of manual labourers; and when there was any question pending on which these classes were at issue with the rest of the

* *Autobiography*, p. 142.

† *Considerations on Representative Government*, p. 155. In the same page he speaks of "the falsely called democracies which now prevail, and from which the current idea of democracy is exclusively derived."

community, no other class would succeed in getting represented anywhere." * He insists, "though every one ought to have a voice, that every one should have an equal voice is a totally different proposition: [that] if, with equal virtue, one is superior to the other in knowledge and intelligence—or if, with equal intelligence, one excels the other in virtue—the opinion, the judgment of the higher moral and intellectual being is worth more than that of the inferior; and [that] if the institutions of the country virtually assert that they are of the same value, they assert that which is not." † He pronounces the belief, "whether express or tacit," "that any one man is as good as any other . . . almost as detrimental to moral and intellectual excellence as any effect which most forms of government can produce." ‡ He urges, "Until there shall have been devised, and until opinion is willing to accept, some mode of plural voting which may assign to education, as such, the degree of superior influence due to it, and sufficient as a counterpoise to the numerical weight of the least educated class; for so long the benefits of completely universal suffrage cannot be

* *Considerations on Representative Government*, p. 135.

† *Ibid.*, p. 165. So at p. 159 he contends that every man "should be legally entitled to have his opinion counted at its worth, though not at more than its worth." I do not remember that he ever discussed the question What *is* the real worth of the average voter's opinion on political subjects?

‡ *Ibid.*, p. 174.

obtained without bringing with them, as it appears to me, more than equivalent evils."* Of Mill's argument on behalf of "universal but graduated suffrage" I shall speak later on. I have already noted how strongly he opposed the introduction of secret voting in the election of members of Parliament.† Not less strongly did he oppose the payment of members of Parliament, on the ground that "the calling of a demagogue would be formally inaugurated" thereby. He adds—

> The occupation of a member of Parliament would thereupon become an occupation in itself, carried on, like other professions, with a view chiefly to its pecuniary returns, and under the demoralizing influences of an occupation essentially precarious. It would become an object of desire to adventurers of a low class, and six hundred and fifty-eight persons in possession, with ten or twenty times as many in expectancy, would be incessantly bidding to attract or retain the suffrages of the electors, by promising all things, honest or dishonest, possible or impossible, and rivalling each other in pandering to the meanest feelings and most ignorant prejudices of the vulgarest part of the crowd. The auction between Cleon and the sausage-seller in Aristophanes is a fair caricature of what would be always going on. ‡

But Mill is "the voice of one crying in the wilderness." He has no disciples left. The more cultivated of the new school of Radicals may, indeed, honour him with their lips, but their heart is far from him. The years which have passed away

* *Considerations on Representative Government*, p. 171.

† See pp. 48, 49.

‡ *Considerations on Representative Government*, p. 209.

since the publication of his book *On Representative Government* have witnessed a complete transformation in the ethos of the party with which he was closely associated. Gradually it has become indoctrinated with the Rousseauan political philosophy. Consciously or unconsciously, its exponents think the thoughts and vent the verbiage of Jacobinism. I know of no clearer, franker, or more succinct statement of their doctrines than that which is given in a little book, published not long ago, and very largely circulated — *The Radical Programme.* The authors speak—and with reason—of the Franchise and Redistribution Acts of 1884 as having wrought "nothing less than a revolution, though a silent and peaceful one." They rejoice that "three-fifths of the electors of the House of Commons belong to the working classes." They pronounce that "manhood suffrage, equal electoral districts, and the payment of members are each, in their turn, indispensable." They add: "An equitable system of Parliamentary representation is absolutely inconsistent with the minority vote, and no sound Radical can acquiesce in such a device for minimising, and it may be nullifying altogether, the power of the majority." "*The power of the majority.*" That is the keynote of the whole book. The postulate upon which it proceeds is the sophism against which Mr. Mill so earnestly contended—that a country should be governed

"by a mere majority of the people, exclusively represented," that is, by their hired mandatories; that the foundation of the public order is a sum in addition.

I suppose that no one has done so much as Mr. John Morley to indoctrinate the Liberal party with these principles. And certainly nothing could more forcibly illustrate the low state of political science in England than that the Liberal party should have gone to school for it to Mr. Morley. A clear, cultivated, and conscientious writer he unquestionably is. That is evident upon every page of his works. Not less evident is the scantiness of his studies in statecraft, the poverty of his political philosophy. For him the French Revolution is "a new gospel;" * Robespierre is "the great preacher of the Declaration of the Rights of Man;" † and the sophisms and sentimentalities of Rousseau are the Alpha and Omega of politics. The "shallowness" and "the practical mischievousness of the Social Contract," Mr. Morley of course admits, as, at this time of day, every man out of Bedlam surely must. But underlying it he finds what he calls "the great truth" that a nation "consists" (the word is his) of "the great body of its members, the army of toilers," that "all institutions"—*all*, note, without exception—"ought to have for their aim the physical,

* *Rousseau*, vol. i. 1.

† *Diderot*, vol. i. 48.

intellectual, and moral amelioration of the poorest and most numerous class. This [he adds] is the People" * with a capital P. And by way of corollary to that proposition he lays down that, unless we have paid members of Parliament, "we cannot be sure of hearing the voice of the People." †

So much may suffice as to the history and the substance of that new political movement specially characteristic of this age, which we may properly call with Mill, "False Democracy." It is false because it does not really mean the rule of the Demos, or People. "The poorest and most numerous class" is not the People. It is not even the most considerable element of the People. There are other elements—we cannot insist too often and too strongly upon this truth—far more important in a nation than poverty and numbers. It is false, again, because it rests upon the manifest sophism of the equivalence of all men in the body politic: "any man equal to any other: Quashee Niger to Socrates or Shakespeare; Judas Iscariot to Jesus Christ." A manifest sophism, surely, which, nevertheless, has become an accepted article of belief, or first principle, not only among ignorant and foolish voters, and the demagogues whose natural prey they are, but among persons of culture and education, accredited teachers of men, who might reasonably

* *Rousseau*, vol. ii. p. 194.

† Speech at Newcastle, Oct. 1, 1891.

be expected to clear their minds from cant. Thus, for example, in a book by no means destitute of merit—Professor Macy's work on *The English Constitution*—I came, the other day, upon the following astounding sentence: "The advent of Democracy"—by which he means the False Democracy which we are now considering, the rule of the adult male population told by the head—"and the advent of the age of scientific research are not two things; they are different manifestations of the same thing." * This is indeed a dark saying. A primary lesson of physical science is the fact of the natural inequality of men, of races, of nations. A primary principle of political science is the inequality of right resulting from this fact. If men are unequal physically, morally, intellectually, most clearly they should not be equal in the body politic. Mill was assuredly well founded when he wrote, "Equal voting is in principle wrong" †—well founded, indeed, in a deeper sense than the words bore for him. By "wrong" he meant merely inexpedient. Sovereignly inexpedient equal voting certainly is. But that is not the only or the chief reason why it is wrong. It is wrong because it is contrary to the nature of things, which is ethical; because it is *unjust*. It is unjust to the classes, for it infringes their right as to

* *The English Constitution*, p. 477.

† *Considerations on Representative Government*, p. 173.

persons to count in the community for what they are really worth; it is "tyrannously repressive of the better sort." It is unjust to the masses, for it infringes their right to the guidance of men of light and leading, and subjects them to a base oligarchy of vile political adventurers. It is unjust to the State which it derationalizes, making it—to borrow certain pregnant words of Green—"not the passionless expression of general right, but the engine of individual caprice, under alternate fits of appetite and fear." * Professor von Sybel is absolutely well warranted when he tells us, in his *History of the Revolutionary Period*, that the Rousseauan theory, which is, so to speak, incarnate in False Democracy, "raises to the throne, not the reason which is common to all men, but the aggregate of universal passions."

Before we pass on to survey the actual working in the world of this False Democracy, and the corruption of the State in which it issues, let us glance briefly at the various apologies put forward for it. They may be reduced to three, which may be termed, respectively, the Abstract or *a priori*, the Utilitarian, and the Sentimental. For the Abstract or *a priori* defence of False Democracy it will be best to go to its inventor, Jean-Jacques Rousseau. His central political doctrine is what is often called "the sovereignty of peoples,"

* *Works*, vol. iii. p. 282.

and what might be more correctly called the sovereignty of the individual. Rousseau postulates unrestricted liberty and boundless autonomy as the normal condition of the abstract man who is the unit of his system. He holds that all the adult male inhabitants of any country are entitled to absolute political equality, that each of them may claim, by natural right, an equal share in the government of the territory where he happens to be born. And the great political problem, according to him, is "to find a form of association which defends and protects, with all the public force, the person and property of each partner, and by which each, while uniting himself to all, obeys only himself." The Jacobin disciples of Rousseau, who endeavoured to translate his speculations into fact, supposed themselves to have solved this problem by the assignment to each adult male of an equal morsel of sovereignty, or—for that is what it practically comes to—of an equal infinitesimal share in the election of one of the depositaries of sovereignty. It is true that by this arrangement the sovereign individual will often find himself compelled to obey laws of which he disapproves. How can he then be said to retain his sovereignty and to obey only himself? Rousseau answers that every sovereign individual, by entering into an imaginary Social Contract, makes over all his rights to the community, his consolation being that if the State

is above him, no one else is, and that he is a member of the sovereign despotic authority, whose sovereignty—although constraining him to do or suffer what he dislikes—is, in effect, his sovereignty.

Mr. John Morley tells us, "Of this doctrine Rousseau assuredly was not the inventor," and refers it apparently to "the great Aquinas," whom he represents as teaching that "only the reason of the multitude, or of a prince representing the multitude, can make a law." I may be pardoned for doubting whether Mr. Morley's acquaintance with "the great Aquinas" is very intimate. I have elsewhere written—

"If, as would seem, Mr. Morley imputes to Aquinas the doctrine that 'the reason of the multitude' is the ultimate source of human authority, he greatly errs. Nothing could be further removed from the teaching of the Angelic Doctor. The original and pattern of all earthly law, ever to be kept in mind by the human legislator, is, as Aquinas holds, that *lex eterna* which is the necessary rule of ethics, and of which, the reason of the multitude, is no more the accredited organ than is the will of the prince. To this it may not be superfluous to add that 'the multitude' meant for Aquinas, not what it meant for Rousseau and means for Mr. Morley, a fortuitous *congeries* of sovereign human units, but an organic whole, implying all that may be gathered from Darwinism and elsewhere as natural and necessary in the organism." *

But whether Mr. Morley's studies in "the great Aquinas" have been profound or superficial, we may be quite certain that Rousseau had never read

* *A Century of Revolution*, p. 11.

a line of him. We may be equally certain that Rousseau derived his fundamental political conception from Hobbes, assigning to the collective sovereignty of all, the unlimited dominion which that thinker had attributed to the single sovereignty of the prince; but, like him, postulating as the source of it, a contract into which all members of the community are supposed to have entered. It is hardly necessary to repeat that this contract is wholly fictitious. The divine right of majorities taught by Rousseau, like the divine right of kings inculcated by Hobbes, rests upon "the thing that is not." To expose Rousseau's political sophisms is, as the old Greeks would have said, to kill the dead over again. And yet those sophisms constitute the stock-in-trade of Continental Radicalism, as a glance at the speeches of the late M. Gambetta may serve to show.

It has been the habit of Englishmen, Heine noted, to neglect general principles in politics; and he thought—with reason, as it seems to me—that we have carried that neglect much too far. However that may be, certain it is that in this respect the New Radicalism—of which, I suppose, Mr. John Morley is the accredited philosopher—has departed widely from the old British traditions. It is essentially *doctrinaire*—a mere transplantation of French Jacobinism. Let us go on to consider the Utilitarian apology for False Democracy presented by the Old Radicalism, of which Bentham

was the Evangelist, of which Bright, Milner, Gibson, and Cobden were the chief Apostles. That Old Radicalism spoke no word of man's natural rights. It did not believe in them. It grounded its worship of majorities upon the principle of utility. Its catchword was "the greatest happiness of the greatest number." This was, in its judgment, the end of the State. And the way to realize this end, it held, was to vest political power in the greatest number. Identity of interest between the holders of political power and the community, was its panacea; and it sought to effect that identity by making the majority supreme. The argument of Bentham is, in effect, this: all people that on earth do dwell, seek what it is to their interest to have: it is to the interest of the majority to have good government: therefore the majority should bear rule.

Such is the Utilitarian apology for False Democracy. It is, in truth, if tested by facts, as untenable as the old *a priori*. Bentham, indeed, in spite of his professed devotion to facts, was really as great a *doctrinaire* as Rousseau himself. The common sense on which he prided himself too frequently proved, in practice, uncommon nonsense. The conception of man as an animal dominated by self-interest is quite unreal. Man is habitually swayed by a number of impulses, emotions, passions, hallucinations, altogether unaffected by Utilitarian calculations. Again, to

desire one's own advantage is one thing; to know how to attain it is quite another. Every one will admit that this is so in the case of children. And surely Napoleon was well warranted when he pronounced the vast majority of adult men mere grown-up children, physically mature, but intellectually quite undeveloped. To which it must be added, that even if it should so chance that an individual voter perceives and pursues his immediate advantage, in bringing his vote to bear on a particular question, it does not in the least follow that what is for his advantage is for the general benefit. Moreover, with universal or quasi-universal suffrage, the number of voters who are capable of even grasping the idea of the general benefit, must, of necessity, be infinitesimal. Consider, with a mind cleared of cant, the average British elector as actual life discloses him, a skilled or an unskilled artisan. How is it possible for him, I will not say to form an intelligent judgment on the graver questions of domestic or foreign politics, but to discern, even in the dimmest outline, their real bearing, their true significance? "Put before him the simplest train of argument, invite him to exactness, ask him to define, beg him to consider differences, and you strike him dumb, unless, perchance, by way of answer, he damns your eyes. He views things disconnectedly, unable to make use of that 'large discourse, looking before and after,' which would interpret their

connection. The very notion of causation is strange to him. Condemned by a law which shall not be broken—for it issues from the nature of things —to a life of manual toil, 'his phenomenal existence, his extensionless present, his momentary satisfaction'—this alone has any reality for him, and his energies are concentrated on its maintenance." * He is the natural prey of demagogues who buy his vote by fawning flattery, by loathsome lying, by abominable appeals to his meanest motives, by profligate promises made in inexhaustible profusion, and incapable of performance. Goethe has defined a majority as "a few strong men who lead, some knaves who temporize, and the weak multitude who follow, without the faintest idea of what they want." True, the weak multitude do not know what they want. How should they? But the strong professional politician—strong with all the strength of his emancipation from ethical scruples—who leads the multitude, knows very well what he wants. "Qu'est ce que le peuple veut après tout?" asks Chaffion in M. Sardou's comedy: "il ne veut que de garanties, ce pauvre peuple." "Quelles garanties?" demands Rabagas. "Quelque chose pour nous," his colleague replies. Can any man honestly say that this is not true? And if it is true, does it not supply a sufficient answer to the Utilitarian apology for False Democracy? Burke

* *A Century of Revolution*, p. 187.

has excellently observed, "I see as little of policy or utility, as there is of right, in laying down a principle that a majority of men, told by the head, are to be considered as the people, and that as such their will is to be law." * It is a spurious Utilitarianism; a Utilitarianism which, in the long run, is not useful to the State, but ruinous.

The Sentimental apology for False Democracy rests upon the belief—or profession—that the instinct of the masses, like that of creatures lower in the scale of existence, never, or hardly ever, goes astray; that it is really a form—an unconscious form—of right reason, and the most trustworthy. I know not who has more copiously, or passionately, urged this apology in our own day than the late Mr. Gladstone. And, no doubt, here is the secret of the popularity which he enjoyed during the latter years of his erratic career. The idol of the populace is the "man full of words," "the excellent stump orator," who, "in any occurrent set of circumstances can mount upon his stump, his rostrum, tribune, place in parliament, or other ready elevation, and pour forth thence his appropriate 'excellent' speech, his interpretation of the said circumstances, in such manner as poor windy mortals around him shall cry 'Bravo!' to." Mr. Gladstone has been surpassed by few in this gift, and his rhetoric was of a kind peculiarly fitted to take captive the

* *Works*, vol. vi. p. 216.

imagination of the masses: grandiose, turgid, denunciatory, unctuous—and vague. Moreover, there was in it a special brand of religiosity, potent to charm the ears of a certain variety of the British Dissenter.* It is matter of history how adroitly he used this endowment to flatter King Mob. In that respect he was not surpassed by the most extravagant orators of the First French Revolution. Like them, he appears to have believed that the populace can do no wrong. On the terrible 20th of June, when thirty thousand ruffians, the *élite* of Parisian blackguardism, marched upon the Tuileries to the cry of *Ça ira*, and poor bewildered Louis the Sixteenth naïvely asked help of the

* I have often thought that Mr. Gladstone must have modelled himself on Robespierre, whose discourses will be found to present a most curious resemblance to his. The deputy Meillan, who listened to much of the Incorruptible's eloquence, describes it as "a tissue of declamation." M. Taine's judgment of it is "pas un détail individuel, vrai, caractéristique, rien qui parle aux yeux et qui évoque une figure vivante; aucune impression nette et franche;" "dans le mot vide il introduit le sens contraire;" which surely might serve as a faithful description of Mr. Gladstone's speeches. Meillan goes on to tell us concerning Robespierre, "nous étions obligés, chaque fois qu'il parlait, de lui demander où il voulait en venir." That is precisely the question which Mr. Gladstone's hearers ever had to ask. Once more, there was about Mr. Gladstone, as about Robespierre, what Mr. Morley calls "a kind of theocratic distinction." "Robespierre prêche, Robespierre censure: il a tous les caractères d'un chef de secte," writes Condorcet. This is just as true of Mr. Gladstone, whose early wishes, it is understood, inclined him to the ecclesiastical state, and who always took the keenest interest in religious controversy—of a kind.

National Assembly, Vergniaud answered, with the greatest seriousness, "Que ce serait faire injure aux citoyens que de leur supposer de mauvaises intentions." Mr. Gladstone's apology for the Plan of Campaign was conceived in a precisely similar spirit. He declined to see, in that abominable conspiracy to break the law, anything more than "a substitute without authority for the law." "How can you say," he demanded, "that those men were wrong who, by the Plan of Campaign, saved people from eviction and starvation?" * Like Mr. Morley, from whom he probably learnt the lesson, he came to regard the poorest and most ignorant of Her Majesty's subjects as forming "the nation." To these he opposed "the classes," inquiring "Are the classes ever right when they differ from the nation?" † It was an odd fate that converted him in his senescence into the chief preacher of "those general principles of democracy," as he termed them, to which, in his early manhood, he hoped "this country would oppose a more organized, tenacious, and determined resistance than any other country which is prominent upon the great stage of the civilized world." ‡

But although Mr. Gladstone, in his long career,

* Speech at Hampstead, July 1, 1888.

† Speech at Liverpool, June 29, 1886.

‡ *The State in its Relations with the Church*, vol. ii. p. 389 (4th edit.).

changed in that respect, as in much else, there were some things in which he did not change. From first to last he manifested a curious adroitness—indeed, in one of his pamphlets he piques himself upon this endowment—of discerning the "ripeness" of questions, and of thereby avoiding "inconvenience in the race of life."* From first to last he displayed a quite unique capacity for obtaining and retaining office, by dexterously setting his sails to the quarter whither—the metaphor is his—the wind was veering.† To resist the devil was not in him, if the foul fiend appeared in the shape of popular plaudits, or a probable Parliamentary majority. On the contrary, he agreed quickly with the adversary, who was at once transformed for him into an angel of light, and gave copious, if not cogent, reasons for his conversion. To say the truth, his reasons were seldom cogent, and were, not unfrequently, conundrums. And this brings us to another psychological peculiarity of his which Lord Macaulay noted at the outset of his political life, and which was as notable at the end of it—his habit of seeking refuge from the consequences of false philosophy in equally false history. Do the annals of the world show, as he alleged, that the unreasoning instinct of the masses has been invariably, or even frequently, right? Why, from

* *The Irish Question*, p. 22.

† *A Chapter of Autobiography*, p. 45. I am far from suggesting that he was a conscious impostor.

the beginning, their choice has fallen on Barabbas. If Mr. Gladstone had not been, as Carlyle rightly judged, "incapable of seeing veritably any fact whatever," he would have discerned that, even now, under the system of False Democracy, it is Barabbas who bears rule in a large part of the civilized world. I shall have to speak of that presently. Here let me put it to the common sense of my readers—Would any sane man go to the masses, in any country, in quest of right reason? Who can deny the truth of the description of them which Milton puts into the mouth of Incarnate Deity?—

> "A herd confused,
> A miscellaneous rabble, who extol
> Things vulgar, and, well weighed, scarce worth the praise.
> They praise and they admire they know not what,
> And know not whom, but as one leads the other.
> And what delight to be by such extolled,
> To live upon their tongues, and be their talk?
> Of whom to be dispraised were no small praise;
> His lot who dares be singularly good."

But if the Puritan poet of the seventeenth century is held to be out of date, let us turn to the Utilitarian philosopher of the nineteenth. In his *Principles of Political Economy* Mill points out "the extreme unfitness of mankind in general, and of the labouring classes in particular, for any order of things that would make any considerable demand upon their intellect and virtue." And in his *Subjection of Women* he invites us to "consider

how vast is the number of men in any great country, who are little better than brutes." Right reason the endowment of the numerical majority? No; Schiller spoke the exact truth when he said that the majority is not merely irrational, but senseless. "Mehrheit ist der Unsinn." The Sentimental apology for False Democracy is as futile as is the *a priori* apology, or the Utilitarian apology.

As for us, let us do what Mr. Gladstone, and the doctrinaires confederate with him, would by no means do: let us look out upon the world around us with open eyes, and see what the working of False Democracy actually is. And first consider it in its birthplace—France. There, thanks to the clean sweep which the Revolution of 1789 made of ancient institutions and traditions, it has not encountered the obstacles which have more or less retarded it in other countries. There you have what its admirers call "le suffrage universel, direct, égalisé, rasé, et nivelé" in all its perfection, as the expression of that sovereignty of the man and the citizen which is the corner-stone of the Rousseauán political edifice. How does it work? A striking book, by one of the ablest of French publicists, which lies before me as I write, M. Benoist's *La Crise de l'État Moderne*, may assist us to answer that question.

"The sovereignty of the man and the citizen." But it may be objected that the Rousseauan theory rather regards sovereignty as residing in the entire nation, one and indivisible. No doubt that is so. "I am the State," said Louis XIV. "The people is the State," is the doctrine now received in France. I have no objection to the doctrine in itself. I think that, if the word "people" be properly understood, it is perfectly true. But let us see what it really means in contemporary France. It is well observed by M. Benoist, "The only expression of sovereignty is the suffrage. If there are ten millions of electors, there are ten millions of atoms of sovereignty. Indivisible in theory, sovereignty is realized only in division." * The French Revolutionary theory does not really mean that the nation in its corporate capacity is sovereign. It really means—as every schoolboy can see—the complete subservience of the numerical minority, or rather of what is accounted such, to what passes for the numerical majority. I use these qualifying words advisedly. For, as a matter of fact, the titular majority in France is no more a real majority than the titular sovereignty of the man and the citizen is a real sovereignty. Some very curious statistics on this subject will be found in an Appendix to M. Benoist's volume. I content myself here with giving the net result of them. Let us take the General Election of

* *La Crise de l'État Moderne*, p. 9.

1893—a fairly representative year. The number of registered electors in France in 1893 was 10,443,378. Of these, 7,147,903 are stated to have voted. The total number of votes obtained by the successful candidates was 4,512,550. The result, therefore, was that the majority of the electors, viz. 5,930,828, were not represented at all in the Chamber elected in 1893;* that number being made up of 3,018,024 who did not vote, and 2,912,804 who voted for unsuccessful candidates. Such is one result of universal and equal suffrage in the country which originated it, and which has carried it to its greatest perfection. The majority of sovereign men and citizens is absolutely disfranchised. The country is ruled by the so-called representatives of a minority.

"The so-called representatives." For, as the majority is a sham majority, so is the representation a sham representation. The deputies in no sense represent the principles, opinions, desires—whatever they may be worth—of the sovereign and equal men and citizens whose votes are cast for them. They represent, as a rule, merely the cunning and cupidity of a gang of professional

* I find that the result of the three preceding French General Elections was similar, as will be seen from the following table:—

	Votes obtained by the Deputies elected.	Voters not represented.
1881 . .	4,567,052	5,600,000
1885 . .	4,042,064	6,000,000
1889 . .	4,526,036	5,800,000

politicians to whom they owe their nomination and election. M. Benoist's account of the matter is so piquant, that I will give it—

"One fine morning some one bethinks himself that there will be a General Election in six months' time. The deputy of the division is used up; he has ceased to be popular; perhaps he belongs to the opposition, and then it is a duty to oppose him; or he has shown that he has not as much influence as he ought to have in those high quarters whence are rained down places and other favours; and then it is a crying need to replace him. Anyhow, this somebody, who is not a somebody but a nobody —the first man in the street possessing a good deal of vanity and a little knowledge of the world—finds a second somebody, equally a nobody, who goes off and finds a third. As soon as there are three of them, X, Y, and Z, a committee is formed: president, vice-president, and secretary and treasurer. The committee calls a general meeting, where each of its members takes care to bring the friends he can most surely rely upon. He unfolds to them what he has done; consults them as to what he is to do. What he has done is ratified by acclamation. As to what he is to do, *carte blanche* is given him. Before this general meeting the committee was modest, and called itself provisional. Afterwards it is established, installed, patented . . . And now the candidate? It is the business of the committee to find one. X, Y, and Z confer every evening. There are mysterious comings and goings to and from their homes. They are looking out for a man. The constituency is in expectation. At last they decide. There is another general meeting. The name of the candidate is put to the vote. There is a show of hands. X, Y, and Z's man receives the solemn approval of two hundred lesser Z's, Y's, and X's. He is from that time a candidate—*their* candidate, *the* candidate. Who has conferred this character upon him? The general meeting. Who has proposed him to the general meeting? The committee. Who has empowered the committee to do that? The first general meeting. Who had convoked the first general meeting? The committee. Who had empowered the committee to do that? No one. But no one calls in question

the credentials, either of the general meeting, or of the committee, or of the candidate. He is the champion, declared, privileged, warranted, by the guarantee of the progressive republicans of the district. And who are these progressive republicans? Oh, you know very well; they are What's-his-Name, and then X, Y, Z!"*

The chosen candidate represents then, as M. Benoist puts it, "a committee which represents nothing," "a small self-constituted clique of local politicians." But is there no means whereby a candidate may render himself independent of the committee? Let M. Benoist answer the question: "There is for the candidate one and only one way of freeing himself from the committee, and that is to put his trust in hard cash: there is one and only one means to avoid doing homage to the committee, and that is not to hold his seat like a feudal fief from the committee, but to buy it outright. Universal inorganic suffrage is organized and is worked by two forces only: the committees and money. But the committees are fatal to its universality, and money deprives it of the character of a suffrage." †

But how do candidates, once nominated, win their election? M. Benoist declares, bluntly, that "the corruption of the candidate by the elector, and of the elector by the candidate," is the normal state of things in France. And again: "Corruption is at once the corollary and the

* *La Crise de l'État Moderne*, p. 20.

† Ibid. p. 22.

corrective of inorganic universal suffrage which, rejecting all distinctions and even classifications, falls into the hands of the most impudent, and which ceases to be anarchical only when it ceases to be universal."* Anyhow, the deputy in one way or another buys his power—there are many ways of buying. And when he gets into the Chamber, he proceeds to sell it. He attaches himself to one of the twenty odd groups existing in the Chamber—political parties, in the proper sense of the word, there are none there—and awaits a purchaser. "Ministers," an acute American observer, Mr. A. Lawrence Lowell, remarks, "must seek support as best they may; and as they cannot rule the majority, they are constrained to flatter and follow it; or, rather, they are forced to conciliate the various groups, and, as the members of the various groups are very loosely held together, they must grant favours to the individual deputies in order to secure their votes." "This satisfaction of local and personal interests," as Mr. Lowell euphemistically calls it, is, he tells us, "a necessity." He adds, "The favours which the deputies demand and exact, as the price of their votes, extend over a large field; nor do they show any false modesty about making their desires known."† They are seldom, indeed, the sort of men to show false modesty—

* *La Crise de l'État Moderne*, p. 18.

† *Governments and Parties in Continental Europe*, pp. 130, 131.

or true. They are, as a rule, political adventurers of a very low type—lawyers without clients, doctors without patients, pedagogues without pupils: the most mediocre of mediocrities. How should they be other? Is it to be expected that men of light and leading should be eager to soil their hands with political life as it exists in France? "The wire-pullers," Mr. Lowell asserts, in his guarded way, "are not over-anxious for really strong characters, because they prefer men whom they can control and use for their own purposes. If they want anything, they exert a pressure on the deputy, who in his turn brings a pressure to bear on the ministers; and hence it has become a common saying that the electoral committees rule the deputies, and the deputies rule the Government."* "Thus," writes M. Benoist, "is forged and rivetted a whole chain of dependencies: the Minister is dependent upon the chiefs of groups, who are dependent upon the deputies, who are dependent upon the committees; and thus at the end of the chain, at the very last rung, Power, everywhere and always, drags about the clog of Number. Hence the humiliating mediocrity, the lamentable sterility of our actual politics: nor can they be other than mediocre and sterile under the present regimen;"† that regimen of inorganic universal suffrage which

* *Governments and Parties in Continental Europe*, p. 135.

† *La Crise de l'État Moderne*, p. 25.

recognizes numbers as the sole power in the State, which subordinates the highest interests of the nation to the "stupid and dumb brutality of figures," which means "the omnipotence of the masses" with their "foolish credulity, puerile inconstancy, envious cowardice, savage brutality." To the like effect is the testimony of the late M. Scherer, in his well-known pamphlet on Democracy. He describes the existing political order in France as "a vast ascending scale of corruption, the local committee governing the deputy, the deputy the Government, and the Government the country; a great evil and a great shame."

And what is a greater evil, and a greater shame, is the hopeless acquiescence of the French people in this colossal infamy. It is a very notable circumstance that the few deputies who have striven for the purification of the French Republic, by their too well-founded denunciations and exposures of parliamentary corruption, were nearly all among the unsuccessful candidates at the last General Election. The wire-pullers had their revenge. The great mass of the electors, so far as they are capable of forming any opinion on the subject, regard corruption as a natural characteristic of their representatives. "Le peuple ignorant croit aujourd'hui que 'patriote' et 'brigand' c'est égal," * it was officially reported

* Taine, *Le Régime Moderne*, p. 226.

in year IV. of the Republic. The same belief still prevails very widely. I remember a distinguished French publicist describing to me the ministries which succeeded one another so rapidly in France as "les premiers venus, jetés au pouvoir par je ne sais quelle petite intrigue, et n'y restant qu'en servant les intérêts personnels des ingénieurs parlementaires." These "parliamentary engineers" are the Bosses of France, who set up one phantasmal ministry after another, filling meanwhile their own pockets. "Quidquid delirant reges, plectuntur Achivi." Such is the Corruption of the State which is the issue of False Democracy in France.

And here France may stand for the type of the Latin races generally. The Corruption of the State by False Democracy is as great in Spain, in Portugal, in Italy; nay, in the last-mentioned country it is, perhaps, greater. In Germany, False Democracy has been kept under by the iron hand of the Hohenzollerns. When Frederick William IV. consented to give a Constitution to his subjects, he invented the formula, "A free people under a free king." It was reserved for his successor to translate the formula into practice. King William, from first to last, showed plainly that he meant to remain at liberty to fulfil his monarchical office; to guard and strengthen the State founded by his ancestors; to extend it as they had done; and, for these ends, to organize

his army in accordance with the exigencies of the times. Of the constitutional conflict which resulted from his carrying out this determination, it is not necessary to speak here. But I may observe that, practically, the German Emperor is to Germany what the Prussian King is to Prussia. The representatives of Germany have two political rights: they fix each year the amount of the contingent; and no new tax may be levied without their consent. The Emperor chooses his ministers with small regard to the parties in the Reichstag, and prescribes their policy. Most English publicists who treat of the politics of Germany—their treatment is not often marked by profound knowledge of the subject—regard this condition of things as deplorable, and would gladly see False Democracy prevailing there. The wisest German thinkers are of a different opinion. We may take Herr Schäffle as a specimen of them. His personal sympathies, as might be expected from so strong a Liberal, are with the Parliamentary system. But he owns, that in the exclusive predominance of universal and equal suffrage, democratic government would probably be fatal to his country. The following passage from this weighty writer may be worth pondering:—

"No nation has gone so far in the unlimited adoption of universal suffrage as the German people, in elections for the Reichstag. Is it due to this that precisely in Germany the

despisers and accusers of universal suffrage are apparently most numerous? In all directions, throughout the German Empire, we hear it said that the effect of universal suffrage has been to render the German Reichstag poorer in capacities, in characters and leaders, with each successive election; that only those social powers (*nur jene sociale Mächte*) which specially and strongly influence the masses—labour leaders, parsons, peasant kings, anti-Semitic screamers and croakers—attain to ever-increasing authority and an ever extremer position; that social democracy, Ultramontanism, agrarianism, anti-Semitism become, and must become, ever stronger under universal suffrage; that the formation of fresh coalitions of Parliamentary parties, incapable of ruling, strong only in negation, ever more and more embarrasses the Government; that the most weighty interests of the nation find no representation, or, if any, only an accidental and altogether disproportionate representation." *

Let us now glance at the United States of America, where False Democracy has had free course, and is glorified. And we will take as our guide Mr. Bryce's well-known work, which, certainly, is written in no spirit of hostility to American institutions. It is abundantly clear that in the New World, as in the Old, the Corruption of the State is the practical issue of False Democracy. Corruption! It is the great fact "writ large" on well-nigh every page of Mr. Bryce's volumes. "Neither party," we read, "has any principles or any distinctive tenets. Both have traditions. Both claim to have tendencies. Both have, certainly, war-cries, organizations, interests enlisted in their support. But those interests are, in the main, the interests

* *Deutsche Kern- und Zeitfragen*, p. 134.

of getting or keeping the patronage of Government. Tenets and policies, points of political doctrine and points of political practice, have all but vanished. . . . All has been lost except office or the hope of it." * "What," said an ingenuous delegate to the National Convention held at Chicago in 1880, "what are we here for, except the offices?" † "In the Federal Civil Service there are about 120,000 places. Here is a vast field . . . for the gratification of personal and party interest." ‡ "The civil service in America is not a career. Place-hunting is the career; and an office is not a public trust, but a means of requiting party services, and also a source where party funds may be raised for election purposes." § "Patronage is usually dispensed with a view to party considerations or to win personal support." ‖ "Politics have been turned into the art of distributing salaries, so as to secure the maximum of support from friends with the minimum of offence to opponents. To this art able men have been forced to bend their minds; on this Presidents and ministers have spent those hours which were demanded by the real problems of the country." ¶ "Elections are entirely in the hands of party managers, and

* *The American Commonwealth*, vol. ii. p. 344.
† *Ibid.*, vol. ii. p. 455.
‡ *Ibid.*, vol. ii. p. 518.
§ *Ibid.*, vol. ii. p. 489.
‖ *Ibid.*, vol. ii. p. 524.
¶ *Ibid.*, vol. ii. p. 488.

the people have little to say in the matter."* Politics in America are, in fact, "a squabble over offices and jobs."

That is the real meaning of the processions, the speech-making, the shouting, the torches, the badges, and the flags, which are such well-known instruments of American political campaigns. On the 29th of October, 1884, Mr. Bryce tells us, the business men of New York, who supported Mr. James Gillespie Blaine in his candidature for the Presidency, held what is called a parade. They numbered twenty-five thousand, it seems: nearly one-third of them lawyers, and another third "dry-goods men" who represented £30,000,000 worth of business. "They started from the Bowling Green, near the south end of Manhattan Island, and marched straight up the city along Broadway, where Mr. Blaine reviewed and addressed them. Rain fell incessantly, and the streets were deep with mud; but neither rain above nor mud below damped the spirits of this great army, which tramped steadily along, chanting—

> "Blaine, Blaine, James G. Blaine,
> We don't care a bit for the rain.
> O—O—O—O—HI—O."†

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* *The American Commonwealth*, vol. ii. p. 199.

† *Ibid.*, vol. ii. p. 580. "In the State elections held in Ohio shortly before, Mr. Bryce explains, 'the Republicans had been victorious, and the omen was gladly caught up.'"

The spectacle of twenty-five thousand business men engaged in such psalmody to honour a gentleman of the calibre of Mr. James G. Blaine, is probably one of the most singular which this planet has ever exhibited. It is not necessary for me to give a detailed account of that popular hero. On one occasion people were whiling away a wet afternoon in a country house, where Voltaire was staying, by telling stories of thieves. It came to his turn, and he began, "There was once a farmer-general," and then, pausing for a few moments, added, "I forget the rest; but that is the essence of the tale." So it is sufficient to say of Mr. James G. Blaine that he was a politician. "The American politician," writes Mr. J. R. Lowell, "is a member of an army of office-seekers, whose warfare is . . . waged chiefly with a rival army of office-seekers, and the spoils of victory, in the form of public offices, . . . are allotted strictly to the officers who have organized and disciplined these voters—to persons more vulgarly called the workers or wire-pullers of the party." * "Politician," Mr. Bryce tells us, "is a term of reproach . . . among the better sort of citizens over the whole Union. 'How did such a job come to be perpetrated?' I remember once asking a casual acquaintance, who had been pointing out some scandalous waste of public money. 'Why, what can you expect from the politicians?' was

* *Essays on Government*, p. 107.

the surprised answer." * "Politicians," he elsewhere observes, "belong to, or emerge from, a needy class." † They constitute "an army," "the desire for office, and for office as a means of gain," being "the force of cohesion [which] keeps leaders and followers together," and "the source of the power the committees wield." ‡ They have "the spirit of self-interest to rouse them," and "the bridle of fear to check any stirrings of independence." § They are organized in rings, which are dominated by Bosses. "What the client was to his patron at Rome, what the vassal was to his lord in the Middle Ages, that the leaders and workers are to their Boss in the great transatlantic cities," ‖ where "Ring-and-Bossdom has attained its amplest growth, overshadowing the whole field of politics." ¶

This is the source of the immeasurable corruption of public life in the United States, for the Boss is, as a rule, utterly venal: he regards and uses power merely as a way to wealth. In Mr. Henry George's terse phrase, he "makes a business of gaining power and then selling it." ** And, as Canon Barnett has truly pointed out, "the penalty" —one penalty—of that corruption "is written in

* *The American Commonwealth*, vol. ii. p. 400.
† *Ibid.*, vol. ii. p. 463.
‡ *Ibid.*, vol. ii. p. 458.
§ *Ibid.*, vol. ii. p. 450.
‖ *Ibid.*, vol. ii. p. 459.
¶ *Ibid.*, vol. ii. p. 468.
** *Social Problems*, p. 17.

the broken lives and bitter passions of the poor." * The Great Republic is really ruled by an aristocracy, or kakistocracy, of Bosses, of whom it is not too much to say that they directly appoint the President, and the Members of the House of Representatives, and, indirectly, the Senate.† The vast majority of the House of Representatives are "politicians," ‡ in the American sense, without any visible means of subsistence, in many cases, but the beggarly stipend attached to their office, whence naturally enough the House "has little sense of its own dignity," § "does not enjoy much consideration," ‖ and produces legislation "scanty in quantity and generally mediocre in quality." ¶ Its energies, in fact, are devoted to quite other matters than legislation for the benefit of the country. "Toil for the public good is usually unfruitful in the House of Representatives. . . . But toil for the pecuniary interest of one's self and one's friends is fruitful." ** The Senate has become, practically, an assembly of plutocrats. "Some," Mr. Bryce tells us, "are Senators because they are

* See his interesting paper on "The Poor of the World," in the *Fortnightly Review*, August, 1893, p. 222.

† The Senators of the United States are nominated by the State Legislatures.

‡ "Politicians pure and simple," Mr. Bryce says (vol. i. p. 197). "Corrupt and astute" would be more accurately descriptive adjectives.

§ *The American Commonwealth*, vol. i. p. 195.

‖ *Ibid.*, vol. i. p. 193. ¶ *Ibid.* ** *Ibid.*, vol. i. p. 268.

rich: a few are rich because they are Senators."* A very considerable American authority asserts, "The mind and moral sentiment of the American people are not represented [in Congress]. The Government is below the mental and moral level even of the masses." †

And what shall we say of the President? Perhaps it will be best to let Emerson speak. "The President," writes that philosopher, "has paid dear for his White House. It has commonly cost him all his peace and the best of his manly attributes. To preserve for a short time so conspicuous an appearance before the world, he is

* *The American Commonwealth*, p. 158. My own information would lead me to believe that not a few Senators are rich because they are Senators. Mr. Henry George writes, "In our National Senate sovereign members of the Union are supposed to be represented, but what are more truly represented are railway kings and great moneyed interests, though occasionally a mine-jobber from Nevada or Colorado, not inimical to the ruling powers, is suffered to buy himself a seat for glory."—*Social Problems*, p. 18.

† Fisher's *Trial of the Constitution*, p. 347. Venality is not, indeed, of the essence of bosshood. Nay, Mr. Bryce affirms "a Boss may be a man of personal integrity." "The atmosphere of oaths and cocktails" which surrounds him may blind him to the sordidness of his occupation and the noxiousness of his methods. "It must not be supposed," Mr. Bryce writes, "that the members of Rings, or the great Boss himself, are wicked men. They are the offspring of a system. Their morality is that of their surroundings. They see a door open to walk to power, and they walk in. The obligations of patriotism or duty to the public are not disregarded by them; for these obligations have never been present to their minds."—*The American Commonwealth*, vol. ii. p. 455.

content to eat dust before the real masters, who stand behind the throne."* But, curiously enough, these real masters have themselves to reckon with a faction which, whatever else may be said of it, does represent a principle, or, at the least, a passion. One Boss bids against another to win the votes of a section of the electorate, described by an indignant writer in a New York journal, as "a nation within a nation—a nation of naturalized Irishmen, enjoying the privileges of American citizens, and feeling no responsibilities except to that portion of the Irish people who are in revolt, more or less open, against the Government of Great Britain." † Surely then, to sum up, Mr. Henry George is well warranted when he writes, "The experiment of popular government in the United States is clearly a failure. Speaking generally of the whole country . . . our Government has, in large degree, become, is, in larger degree, becoming, government by the strong and unscrupulous. . . . In many cities the ordinary citizen has no more influence in the government under which he lives than he would have in China. He is, in reality, not one of the governing classes, but of the

* *Essays*, p. 80 (Macmillan's edition).

† The New York *Puck*, April 11, 1889. The writer continues, "Perhaps it is harsh to blame the newspapers for taking their cue from the statesmen, who, all over the country, bow down before this alien fetish. Yet we may fairly look to the press, the censor of politics, to be superior to the politicians."

governed. He occasionally, in disgust, votes for 'the other man,' or 'the other party,' but generally to find that he has effected only a change of masters, or secured the same masters under different names. And he is beginning to accept the situation and to leave politics to politicians, as something with which an honest, self-respecting man cannot afford to meddle." * Mill, who weighed his words, went so far as to say that in the United States, "the first minds of the country are as effectually shut out from the national representation, as if they were under a formal disqualification." † Certain it is, that the special note of the public life of that country is intense sordidness. This it was that wrung from Emerson the pathetic lament—even truer, now, alas! than when it was uttered—"Who that sees the meanness of our politics but inly congratulates Washington that he is long already wrapped in his shroud and for ever safe; that he was laid sweet in his grave, the hope of humanity not yet subjugated in him?" ‡

Such is the working of False Democracy in the United States. Let us now look at it in England. Our political arrangements differ in some very important respects from the American. Instead of an elective President, who for his four years'

* *Social Problems*, p. 16.

† *Considerations on Representative Government*, p. 157.

‡ *Essays*, p. 216.

tenure of office governs, and possesses the substantial powers of royalty, we have an hereditary Sovereign, who reigns and does not govern, and whose influence upon public affairs, however important, is chiefly indirect and moderative. Instead of ministers responsible to the chief of the State, we have ministers responsible to the House of Commons. The separation between the executive and legislative powers, so clearly marked in the United States, is much fainter in this country. The Prime Minister and his colleagues are not only the heads of the departments entrusted to them, but are also the initiators of new legislation. But we have this in common with the political condition of the United States, that among us, too, the principles and practices of False Democracy prevail. They have supplanted the old British theory of constitutional government.

For, as I observed in my last Chapter, the Reform Act of 1832 made a new departure in English political life. The profoundest thinker among living Englishmen, when that measure was introduced, denounced its authors as doing "the utmost in their power to rase out the sacred principle of a representation of interests, and to introduce the mad and barbarizing scheme of a delegation of individuals." * These words of Coleridge are as accurate as they are vehement.

* *Table Talk*, p. 144.

When the Duke of Wellington told the House of Lords "the principle of this measure is not *reform*"—reform he fully acknowledged to be necessary—when he declared that the spirit animating the movement of which it was the outcome was "the consequence of the French Revolution," he was absolutely well warranted. The feature in the measure to which he most strongly objected was "a uniform system of election." It was the introduction into the country of political atomism, of a representation of mere numbers—a principle so utterly at variance with our traditions as to lead him to predict, "From the period of its adoption, we shall date the downfall of the Constitution." I need hardly observe that the Reform Act of 1832 by no means possessed that character of finality which its authors claimed for it. Lord Althorp declared in the House of Commons, "I have every reason to hope that the change we propose will be permanent." And on another occasion he told the House, "I am sure that the people of this country are not so fickle as to give reason to apprehend that when they have no practical evil to complain of, they will still wish for change for the sake of change itself. It has been truly said that what this country requires is quiet and a cessation from anxiety and agitation." So Lord Grey, in the House of Lords, anticipated "permanent contentment" from his Bill. "It was desirable,"

he said, "that if the question was to be entered into at all, it should be done in such a manner as to afford a hope that it might be effectively and permanently adjusted."

Curious pronouncements are these read in the light of subsequent history. Principles are the strongest things in the world. They have a life of their own. They work themselves out by logical necessity. And they often produce consequences most alien from the minds of those who have adopted them, for an immediate purpose, in ignorant indifference to their real nature. The Reform Act of 1832 was but the beginning of a series of similar statutes, sometimes initiated by those who sat in the seats of Lord Grey and Lord Althorp, sometimes by so-called Conservatives desirous to "dish" them; but all underlain by the Rousseauan or Jacobin principle of the political equivalence of men and of the absolute right of numerical majorities; and each carrying that principle further. The net result of them, and of the accompanying changes in local government is, that if the English system, as it exists at this moment, were really representative, all power would be in the hands of the manual labourers, skilled and unskilled. That clear-sighted publicist Mr. Bagehot warned his generation, "We should be very cautious how we now proceed to found a new system without any provision [for giving] the requisite influence to the instructed classes, and

with no counterbalancing weight to the scanty intelligence of very ordinary persons, and the unbridled passions of the multitude." * His warning fell on deaf ears. We have not been very cautious. We have been absolutely reckless. In their eagerness to outbid one another for that popular support which would give them place and power, our two great political parties have stuck at nothing. It is notable that the most flagitious and most disastrous of the so-called "reforms," the clean sweep made in 1884 of the old historical constituencies, and the close approximation to equal electoral districts, was, in a very large degree, due to the leader of the so-called Conservatives.† I say "so-called Conservatives."

* *Works*, vol. iv. p. 424.

† On this subject see an interesting page (p. 164) of Herr von Gneist's *Die nationale Rechtsidee von den Ständen und das preussiche Dreiklassenwahlsystem.* It is not easy to imagine any wider departure from English constitutional principles than the destruction effected by the Third Reform Act (1884–5) of the ancient franchises of counties and boroughs—the unavoidable consequence, Gneist remarks, of universal and equal voting—or than the gradual development of caucuses and their machinery, and the ever-increasing degradation, as Burke had prophesied, of our "national representation into a confused and scuffling bustle of local agency" (*Works*, vol. iii. p. 360). Perhaps few of us really realize the magnitude of these changes, which, as Herr von Gneist observes, are "more easily discerned by outsiders than by the society concerned." He continues in a passage which contains enough truth to be worth quoting—

"To outsiders, this mighty edifice [of the British Constitution] appears almost a ruin. The professional politician of the

For what is it that the Conservative party wants to conserve? What *idea* is there behind the frightened, unintelligent opposition of the average Conservative to changes which, in his heart of hearts, he believes to be inevitable? The Conservative party is no less committed, implicitly, to the principle of False Democracy than is the other party. And the only means by which it

Continent might be tempted to regard with a certain malicious joy the present development of Parliamentary government in the land of hereditary wisdom. There, too, is the old formation of the great Parliamentary parties torn into six or seven factions, which, again, exhibit in themselves points of difference whence will issue still further subdivisions. There, too, have Radical parties arisen, whose programme seems incompatible with the working of a constitutional ministry. There, too, extreme parties combine with their direct opposites for a factious opposition, which falls asunder as soon as there is question of assuming the responsibilities of government. There, too, the personal level of the representatives is declining, as is also the observance of Parliamentary manners and decencies. There, too, fortuitous alternations of party ministries seem likely soon to be the rule, as in France and Greece. There, too, appear unintelligible changes of opinion in the newly constituted electoral districts—more like changes of the weather than anything else—which place the existence of every Administration in question, and seem to make adherence to a settled policy impossible. In the place of the old Whigs and Tories with their programme—corresponding to what are called in Germany the middle parties—there have arisen in the Parliament new groups, with class interests (*neue gesellschaftliche Interessengruppen*), which gradually swell to majorities, and which have in common with one another only the negative characteristic that, neither singly nor in coalition with one another, are they in a position to carry on Parliamentary government."

can obtain or retain office is by doing homage to that principle. Of course Lord Salisbury's object in 1884 was to secure some agreement with his adversaries which would prevent his party from being "dished." But there is simply no rational ground on which he can now resist the cry for absolutely equal electoral districts, and "one man one vote;" in other words, for a purely numerical system of representation. The principle was conceded in 1884; and principles are stronger than the men who play fast and loose with them; much stronger, which perhaps is not saying a great deal. Anyhow, the upshot is that the Duke of Wellington's prophecy has been fulfilled to the letter. The downfall of the old Constitution under which our country achieved more than Roman greatness, is complete. We have experienced "a revolution in due course of law." What is, practically, universal inorganic suffrage now prevails in England, as in France.

The question then arises, Why has it not, as yet, produced in this country so much mischief as in that? Why is it, to quote the words of Professor Macy, that "while democracy has run riot in France, the English have by common consent taken on democracy in a restrained, conservative manner"? * No doubt national history is rooted in national character. And national character has its own laws. A people

* *The English Constitution*, p. 482.

has its proper life, its distinctive physiognomy. The British temperament is alien from "the schoolboy heat, the blind hysterics of the Celt." Moreover, in 1789, France, in a single night of verbose intoxication, broke with all her old historical traditions. In England old historical traditions are a great power. Mr. Bagehot well observes, "There has ever been a *structure* in English political society: every man has not walked by the light of his own eyes; the less instructed have not deemed themselves the equals of the more instructed; the many have subordinated their judgment to that of the few. They have not done so blindly, for there has always been a spirit of discussion in our very air: still they have done so—opinions have always *settled down* from the higher classes to the lower; and in that manner, whenever the nation has been called on to decide, a decision that is really national has been formed." * "England," he elsewhere quaintly says, "is a deferential country:" nay, "the type of deferential countries." "The nominal constituency is not the real." We may admit that this is so, and that—to quote Professor Macy again—"the present constitution depends for its stability upon the rational and conservative character of the people." † But characters are modified, nay, are largely transformed, by the influences brought to bear upon them. And that

* *Works*, vol. iv. p. 383. † *The English Constitution*, p. 480.

in nations as in the individuals of whom nations are composed. The wide diffusion, one might almost say the unquestioning acceptance, among us of purely arithmetical or mechanical conceptions in politics, and the consequent belief in the absolute right of majorities, constitute a most grave danger. For such conceptions necessarily tend to realize themselves in fact. Add to this that responsible politicians—I employ the word in all the degradation of its American associations rather than prostitute the venerable name of statesman—responsible politicians, I say, in their eagerness to pander to and to trade upon popular passions, have used every rhetorical artifice to split up our national solidarity and to array the masses against the classes. Their inflammatory diatribes breathe the very spirit of Rousseau's anathemas upon the culture, the wealth, the leisure, to which they owe their own position and influence. They teach, almost in terms, his doctrine that civilization is depravation—"l'homme civilisé est un être dépravé;" that the instincts of the ignorant and untutored child of nature—the rough, in fact—are the best qualification for the exercise of political power. But certain it is that when the masses in any country, realizing their possession of preponderating political power, use it for the purpose of swamping the better-educated and better-off minority, the decadence of that country has begun.

For—let us lay this fact to heart—the quintessence of that vast chaotic movement which I have called, with Mill, False Democracy, is not political, in the ordinary and corrupt sense of the word, but social. Its end is not a mere rearrangement of the mechanism of the State for the benefit of wire-pullers and bosses. No. What advantageth it to the mechanic, groaning under the forced toil of over-competition, to the agricultural labourer, as truly a mere animated tool—*ἔμψυχον ὄργανον*—as the slave in Aristotle's time, that he possesses an infinitesimal share in the election of one of the rulers of his country, unless his material condition is improved thereby? Equality of right is only a barren notion unless it be wedded with fact. The matter is summed up with admirable terseness in M. Ledru Rollin's famous declaration: "To arrive at social amelioration through the political question" ("passer par la question politique pour arriver à l'amélioration sociale")—"such is the course of the Democratic movement." This is a truth to which Lazarus will no doubt request the attention of Dives. And Lazarus is now master of the situation, as Dives fully recognizes when soliciting his vote in Parliamentary elections. Will he be any longer content to lie at the gate in his rags, watching through the bars the rich man within, clothed in purple and fine linen, and faring sumptuously every day, in the hope, not always

gratified, that some stray crumbs may fall to him from that luxurious table? I think not. Between the two classes, of which these are the divinely drawn types, there is what Mill euphemistically calls "complete opposition of apparent interest." And well may that thoughtful writer proceed to inquire: Even supposing the ruling majority of poor

"sufficiently intelligent to be aware that it is not for their advantage to weaken the security of property, and that it would be weakened by any act of arbitrary spoliation, is there not a considerable danger lest they should throw upon the possessors of what is called realized property, and upon the larger incomes, an unfair share, or even the whole, of the burden of taxation, and, having done so, add to the amount without scruple, expending the proceeds in modes supposed to conduce to the profit and advantage of the labouring class?" *

This inquiry of Mill's may, with advantage, be pondered a little. I shall observe upon it, that, as a matter of history, no fear of weakening the security of property has ever withheld the classes which possessed none, from acts of arbitrary spoliation when they have had the power of bettering their condition thereby. Experience testifies to the truth of Grattan's saying: "If you transfer the power in the State to those who have nothing in the country, they will afterwards transfer the property." This is, of course, what Socialism proposes to do. And of Socialism, in the

* *Considerations on Representative Government*, p. 120.

judgment of the late M. Scherer—one of the clearest-headed and most far-seeing of French Liberals—the Falsely Democratic Republic existing in his country "is bound, by the very law of its being, to make trial." Whether or no he was right in so thinking, I do not undertake to say. At all events, his opinion on the matter is worth far more than most people's. Certain it is, however, that the very foundation of Socialism is the doctrine of the absolute power of numerical majorities. "Its essential law," as one of its chief exponents at the Namur Congress, a certain "Citizen" Volders, declared, "is to ensure the free exercise of the force of numbers."* But, short of systematic Socialism, incalculable mischief may result from the madness of the Many, intent upon levelling down, in the economic order, by legislation utterly opposed to the true principles of political science; upon achieving, at all events, an approximate equality by way of abasement. The attempt is, of course, doomed to ultimate failure, because it is contrary to the laws of human nature. I do not know who has pointed out this truth with greater force than Aristotle in the Eighth Book of the *Politics*. Absolute equality, once attained, immediately begets a discontent with itself and a striving after inequality, and sooner or later leads thereto. Its usual issue,

* Quoted by Desjardins, *De la liberté politique dans l'État moderne*, p. 238.

politically, is in Cæsarism, veiled or avowed, and, economically, in the usurpations of the usurer.

Is Socialism, then—whether systematic or unsystematic—"the consummation coming past escape" upon the civilized world? Or is there any cure for the prevailing corruption of the State which will save it from such dissolution? any antidote to the irrational egalitarianism which is the essential *virus* of False Democracy? Seven such remedies, or antidotes, have been proposed. I will briefly consider them before concluding the present Chapter.

1. Popular Education.

And first let me speak of popular education. Is it possible to neutralize the evils of universal inorganic suffrage by educating the voters? We all remember Lord Sherbrooke's dictum on this subject. It would be interesting to know how far he had thought the matter out. "To educate our masters." Is it possible to bestow such an education upon the average voter—or, we will say, "the man and the citizen," if that cant phrase is preferred—as will qualify him for the exercise of the sovereignty which False Democracy confers upon him? I have spoken of him, in a previous page, as actual life really discloses him to our

observation, his mind's eye dim, its range circumscribed, the images pictured upon it blurred, inaccurate, and misleading. Can we look to primary schools, whether voluntary or board, to cure these defects of his political vision? Admitting, for the sake of argument—and it is a very large admission—that his will is sincerely and honestly directed to the task, how is it possible for him to acquire such an amount of knowledge and intellectual discipline as will qualify him for forming a sane judgment even upon the essential elements of public problems? I am far from denying that it is as possible for the peasant as for the prince to be educated, in the proper sense of the word—the sense expressed by Milton: "I call a complete and generous education that which fits a man to perform justly, skilfully, and magnanimously all the offices, both public and private, of peace and war." Yes, the true conception of education is put before us in these majestic words: to teach a man his duties, and to discipline and develop his intellect and his will for their accomplishment. That every manual labourer, skilled or unskilled, owes duties to his country, and that these duties involve corresponding rights, I do not deny, I strenuously maintain. But, assuredly, the sovereign functions bestowed upon him by universal and equal suffrage are not among those duties or those rights; assuredly the education

capable of being imparted to him by primary or other schools, cannot possibly fit him for such functions, cannot possibly qualify him to sway the rod of empire and to determine the fate of nations. Reading, writing, and arithmetic, a little elementary history, a little elementary geography—what an equipment for such a task! Of all the manifestations of human folly, surely the glorification of the educational nostrum in politics is one of the most foolish.

You forget, it may be said, the newspaper press, that glorious instrument of popular enlightenment. Ah, no; I do not forget the newspaper press. But a stranger instrument of political education it is not easy to conceive. I suppose the newspapers really are the chief source of the jumble of notions which have drifted into the head of the average voter, and which he calls his opinions, or, it may be, his principles. These are, for the most part, if we carefully examine them, formulas void of sense, false aphorisms, claptrap phrases, disingenuous arguments, nicknames, watchwords, empty platitudes, and the most ambiguous of commonplaces. I need not dwell longer upon what must be evident to every one who will impartially consider the matter. Some years ago, having occasion to write upon the Ethics of Journalism, I ventured to express my opinion that "the newspaper press, during the last quarter of a century, has done more than anything else to de-ethicise public life; to lay

the axe to the root of duty, self-devotion, self-sacrifice, the elements of the moral greatness of a nation which is its true greatness." * I have seen no reason since to modify that opinion.

2. Compulsory Voting.

Another antidote to the *virus* of inorganic universal suffrage which has been confidently recommended, is compulsory voting. Certain it is that, as a rule, the people who stay away from the ballot-boxes are precisely the men for whose political opinions some real value may be claimed. These may well disdain to vote when their votes will be swamped by the ignorant crowds led captive by the wire-puller at his will. It is proposed—in one or two countries the proposal has been acted upon—to compel them to vote, under penalties. But surely there is something ridiculous in the notion of a sovereign thus compelled to exercise his sovereign functions. Such a sovereignty is curiously like a servitude. And what penalties? Deprivation of the franchise? That will hardly be a penalty to one who does not care to exercise it. Fine or imprisonment? What a monstrous invasion of individual freedom! Surely liberty to vote implies liberty not to vote. Surely the voter is the proper person to determine whether he

* *On Right and Wrong* (3rd ed.), p. 173.

should vote. It is a matter for his own conscience. He may possess just enough of knowledge to realize his vast ignorance regarding the merits of the issues put before him; his utter incapacity for rationally deciding them. He may—like Catholics in Italy at the present time—consider himself bound to lend no countenance to the Government under which he is enforced to live. In these and the like cases, his duty clearly is *not* to vote. And to compel him to do so is, plainly, a gross violation of sacred rights of conscience.

3. Double or Indirect Election.

Some publicists—conspicuous among them is the late M. Taine—have recommended a system of double election, or election by two stages, in place of the system of direct and equal universal suffrage. It looks well on paper; and a distinguished Belgian statesman attributes to it "a remarkable power of filtration." But the facts hardly warrant this view. No doubt the theory is excellent. The ignorant and incompetent mass of voters refrain from exercising themselves in great matters which are too high for them, and select fit and proper persons, possessing the qualifications they themselves lack for rationally discharging the task of election. But the actual result of this system, wherever it has been tried—so far as I am aware—has been to convert the

electors chosen under it into mere delegates. And that is entirely to nullify it, to render it an empty form, worthless in practice. Thus the French Senate, which is the outcome of a very cunningly devised scheme of double election—the Life Senators were suppressed by the law of 1884—is not appreciably superior to the Lower Chamber. The Senators, indeed, are, for the most part, used-up deputies. "Indirect elections in Prussia," writes Mr. A. Lawrence Lowell, "have worked in the same way as our [the American] method of choosing the President by means of a college of electors; that is, the Prussian electors do not really select the representative, but are themselves almost always voted for in the name of a definite candidate whom they are pledged to support." "And more," he adds, "this must necessarily be the case whenever the electors have no other function than the election." * Probably, Mr. Lowell is right in that opinion. At all events, I think we may safely assert that this system of double election demands from the preparatory elector—if we may so call him—an amount of self-abnegation, or, at the least of discipline, which he seldom possesses; while it presupposes in the secondary elector—thus to designate him—the same moral qualities, together with a rare degree of courage, firmness, and independence.

* *Governments and Parties in Continental Europe*, p. 308.

4. Voting by Professional Categories.

M. Benoist, who feels as strongly, and has exposed as unsparingly as any living publicist, the evils of the False Democracy at present prevailing, has his own scheme for remedying them. It is a brand-new scheme,* and merits careful examination, both on account of the respect due to its distinguished author, and of the ingenuity which he has displayed in its construction. The distinctive feature of it is that the electors shall be organized in *professional categories*, which shall choose representatives *from among themselves*—not from outside. M. Benoist does not propose to interfere with direct, equal, and universal suffrage. But he would recast it, so that not only numbers but interests may be represented. He would classify the electors in each electoral district, in—say—eight groups, according to their occupations, and to each group he would assign representatives according to their numbers. Number, the counting of heads, still remains in M. Benoist's scheme the point of departure. He would reallot the five hundred seats in the French Chamber—for he is writing with immediate reference to France—among the eighty-seven departments according to population. And he would distribute the number falling to each department by this arithmetical operation,

* See chap. vi. of his *La Crise de l'État Moderne.*

among the professional groups according to their numerical strength. His professional groups—it will be best, perhaps, to keep the French nomenclature—are: I. Agriculture; II. Industrie; III. Transports, postes et télégraphes; IV. Commerce; V. Force publique; VI. Administration publique; VII. Professions Libérales; VIII. Rentiers. Of these the fifth, Force Publique, does not count for much, as, under the existing law, the army does not vote. Let us now see how M. Benoist's scheme would work out in one of the most considerable of the departments of France: le Nord. Nineteen seats would fall to it; and they would be thus distributed: I. Agriculture, 5 Deputies; II. Industrie, 9 Deputies; III. Transports, postes et télégraphes, 1 Deputy; IV. Commerce, 3 Deputies; V. Force Publique, VI. Administration Publique, VII. Professions Libérales, and VIII. Rentiers—all taken together—1 Deputy. No one of these last four categories is numerous enough by itself in the Nord to claim a representative; and M. Benoist urges that we may therefore lump them together without doing too much violence to logic or reality. This important department, then, if M. Benoist's scheme were adopted, would contribute to the Chamber five farmers, probably peasants—for remember the election is by counting heads, and jealousy of those above him is a dominant passion with the average French elector; nine *industriels*, probably mechanics; four traders, probably small

shopkeepers; one representative of transports, etc., probably a postman or a telegraph clerk; and one representative of the army and navy, the Liberal professions, the civil service generally, and persons of independent fortune; the only one of the lot, we may be pretty sure, who would belong to the classes as distinguished from the masses.

Now, what are we to say of M. Benoist's scheme? Does he really imagine that his system of electing deputies by, and from, professional categories, would result in a Chamber truly representative of the French nation—its wealth, its industries, its energy, its intelligence, its culture, its traditions, as well as its numerical strength? Or, to express it otherwise, would render available, for the common weal, all the constituent elements which make it a great people? Unquestionably, he is well warranted in regarding the professional politicians, who constitute the majority of the French deputies, as a curse to their country. They represent nothing but corruption and the basest interests and passions. But can he suppose that his system would make an end of them? No doubt they are chiefly recruited, at present, from among indigent lawyers and doctors. But the place of deputy, with its salary and its opportunities of trading upon the power which it confers, is a prize which would attract equally a sharp-witted peasant, or mechanic, or small trader or postman or telegraph clerk. The *personnel* of the Chamber would be

changed by M. Benoist's scheme. But the professional politician would still dominate it, although he would come chiefly from the operative classes. Three-fourths of the Chamber, as M. Benoist conceives of it, would be elected by peasants and mechanics, who would form an overwhelming majority in the categories of *Agriculture* and *Industrie*, and who would certainly, as a rule, choose men of their own position in life to represent them; for, as I have already observed, hatred and distrust of those socially above them is, usually, one of the strongest passions of the French peasant and mechanic. As certainly the greater number of those representatives would adopt politics as a trade. What would be gained by M. Benoist's scheme? Like the present system, that scheme would place preponderating political power in the unfittest hands. And this is its sufficient condemnation.

The truth is that M. Benoist does not go to the root of the matter, and that simply because he dares not. Indeed, he himself owns as much with a candour which is somewhat winning. The reason of the political woes of France is this: that the polity existing in that country is founded upon a lie—the baseless and baneful fiction of human equality. The first and fundamental proposition of the *Declaration of the Rights of the Man and the Citizen*, in which Rousseau's disciples embodied his gospel, is absolutely false. Men are

not born and do not continue equal in rights. They are born and they continue unequal in rights, just as they are born and continue unequal in mights, and therefore they are not entitled to equal shares of political power. M. Benoist fully recognizes this. "Inequality of value among men," he writes, "is a natural fact. And the practical consequence which spontaneously flows from it is this: Since inequality is a fact, equality ought not to be a right; since all men are not identical, all should not have the same power as electors. No! Men are not equal to one another physically, morally, intellectually, or from any point of view of natural fact; and therefore they ought not to be so politically." * These are the words of truth and soberness. And yet, as we have seen, M. Benoist's scheme is based upon this very equality, the falsity of which he thus exposes. Why? His answer is very simple. "For fifty years in France we have had universal, equal suffrage. We can't touch it. 'Argumentum ex necessitate.'" To this the rejoinder is plain, and has, indeed, been supplied by an observation of Rousseau himself—one of the luminous truths which light up from time to time the black darkness of his sophisms. "If the legislator establish a principle at variance with that which results from the nature of things, the State will never cease to be agitated until the principle has been expelled, and invincible Nature

* p. 101.

has resumed her sway." Which seems to me a still more cogent "argumentum ex necessitate" than the one adduced by M. Benoist.

5. The Referendum.

The Referendum is a popular vote on laws and public questions, which have already been discussed by the legislative body. Its home is the Swiss Republic, a confederation of twenty-two sovereign States, the larger of which possess elected legislatures, while the smaller legislate by mass meetings. In the larger the population does not exceed half a million; in the smaller it is about twelve or thirteen thousand. Under the Swiss Constitution of 1874 alterations of the Constitution are subject to the Referendum, and any legislation of the Federal Parliament may be so subject. "The appeal," writes Professor Dicey,* "is to the people's judgment of a distinct, definite, clearly stated law. . . . It does not facilitate any legislation which Parliamentary wisdom or caution disapproves. It merely adds an additional safe-

* *Contemporary Review*, April, 1890, p. 496. The professor adds in a note, "Of course, in making this statement, I do not refer to the right given under Constitution Fédérale, Art. 120, to 50,000 Swiss citizens of demanding the preparation of a scheme for revising the Constitution. This right is what Swiss authors call the Initiative, and is certainly not an essential part of the Referendum."

guard against the hastiness or violence of party. It is not a spur to democratic innovation; it is a check placed on popular impatience." There are two reasons, the professor notes, why its introduction into this country—to speak merely of England—is advocated: that it supplies, under the present state of things, the best, if not the only possible check upon ill-considered alterations in the fundamental institutions of the country, and that it tends to sever legislation from politics. I must refer my readers to his extremely interesting and able paper for his discussion of those reasons, merely noting here the conclusion at which he arrives: that "there is more to be said for, no less than against, the popular veto than English thinkers are generally ready to admit." It appears to me that the success of the Referendum in Switzerland —which seems to be pretty generally allowed—is due to the extremely peculiar political conditions of that country. It is a country in which there are no classes and no masses; no glaring inequalities in wealth, education, or social standing; it is an agricultural country, possessing neither mines nor manufactures, and undisturbed by industrial struggles; it is a country in which direct legislation in the little peasant republics has been a regular constitutional feature from the very beginning of its history. We may say that in Switzerland something very like equality of fact prevails among the electors. The Democracy

resting there on equal and universal suffrage is not a wholly false, but an approximately true Democracy. In this country it is far otherwise. Society in England, as in most European nations, is highly complex and artificial, and implies vastly varying individualities, very numerous and extremely diverse classes and interests. An appeal to the majority of the population told by the head, in such a country as this, would be a direct appeal to "the yea and no of general ignorance." It would be a fresh step in the wrong direction; or, to change the metaphor, and to borrow a French phrase, it would be the crowning of the pseudo-democratic edifice.

6. The Multiple Vote.

A far more promising device for mitigating the evils of False Democracy is the Multiple Vote. Mill, as we have seen in a previous page of this Chapter, urged its adoption with much earnestness. And I am not aware that his main argument has ever been answered. Indeed, it seems to me unanswerable. The justice of conferring upon those of greater capacity a more potential voice than upon those of less, in the management of joint interests, is, indeed, in itself so manifest, that only a fool or a fanatic could gainsay it. And the experience of Belgium, touched upon in the last Chapter, shows—what hardly required

demonstration—that there is no practical difficulty in making such concession with regard to the electoral suffrage. "If it be asked," writes Mill, "to what length the principle admits of being carried, or how many votes might be accorded to one individual upon the ground of superior qualification, I answer that this is not, in itself, very material, provided the distinctions and gradations are not made arbitrarily, but are such as can be understood and accepted by the general conscience and understanding. But it is an absolute condition . . . [that] the plurality of votes must on no account be carried so far, that those who are privileged by it, or the class, if any, to which they mainly belong, shall outweigh by means of it all the rest of the community."* This is so clearly reasonable as to require no comment. Mill adds, "Plural voting, though practised in vestry elections and in those of poor law guardians,† is so unfamiliar

* *Considerations on Representative Government*, p. 169.

† And we may note that, in elections to School Boards—which have come in since Mill wrote—we have the cumulative vote. I must here say a word on the chaotic state of the English law as to the electoral franchise. In the first place, the kinds of electorate are diverse. There are the Parliamentary, the Parochial, the County Council and Municipal—to say nothing of the School Board. And these electorates comprise many varieties of electors: for example, Freeholders, who have the Parliamentary and Parochial votes, but not the County Council unless they occupy their freeholds; £10 Occupiers and Householders who, if of the male sex, are richly endowed with

in elections to Parliament, that it is not likely to be soon or willingly adopted; but as the time will certainly arrive when the only choice will be between this and equal universal suffrage, whoever does not desire the last, cannot too soon begin to reconcile himself to the former."

7. A Strong Upper Chamber.

But Multiple Voting, however carefully and justly organized, would be, at the best, but a palliative for the mischiefs of False Democracy. The true conception of representative government, as we saw in the Fifth Chapter, is that all independent elements, all powers which exercise any considerable influence on the life of a nation, should be duly represented. And a popularly elected Chamber, even if the electoral machinery received

well-nigh every kind of vote; Service Voters and Lodgers, of the same sex, who have the Parliamentary vote only; Peers, single women, and widows, who, being Occupiers, have the County Council and Parochial vote, but not the Parliamentary; and Married Women Occupiers, who have only the Parochial vote. The distinction between an Occupier and a Lodger is, in the highest degree, artificial: nor does it entirely depend, as is generally supposed, upon the residence or non-residence of the landlord. And it is not easy to imagine more arbitrary and absurd anomalies than those which attach to residential qualification. These vagaries of the law are due to our piecemeal system of legislation, and to the great number of judicial decisions, some of them contradictory, by which it is supplemented.

all the improvements so cogently advocated by Mill, would still represent, principally, numbers, the element of least importance in the national life. This, indeed, he candidly confessed. "Those whose opinions go by the name of public opinion," he remarks, "are always a mass, that is to say, collective mediocrity. . . . Their thinking is done for them by men much like themselves, addressing them, or speaking in their name, on the spur of the moment, or through the newspapers. I do not assert that anything better is compatible, as a general rule, with the present low state of the human mind. But that does not hinder the government of mediocrity from being mediocre government. No government by a democracy or a numerous aristocracy, either in its political acts or in the opinions, qualities, and tone of mind which it fosters, ever did or could rise above mediocrity, except in so far as the Sovereign Many have let themselves be guided (which in their best times they always have done) by the counsels and influence of a more highly gifted One or Few." So Mill in his essay *On Liberty*. And in his *Representative Government* he insists that a Second Chamber should be "composed of elements" which "would incline it to oppose itself to the class interests of the majority, and qualify it to raise its voice with authority against their errors and weaknesses." In order to possess that authority, it should

specially represent those factors in the national life which will never be adequately represented in an assembly due to the accident of popular election.

This truth has been recognized in the constitution of the Upper Houses in most European countries. And M. Benoist would accompany his reform of the French Chamber by a reform of the French Senate, which he wishes to see elected in equal proportions by the Councils General, the Municipal Councils, and the various corporate bodies of each department. In this way, he urges, the individual would be represented in the Chamber, through the professional group to which he belongs: and local unions, administrative and civil—social organisms, we may call them—would be represented in the Senate. The example of the United States is here much in point. Mr. J. R. Lowell is well warranted when he claims, "The Americans are the only people who have set themselves to work to solve the problem of restraining the power of the majority." * And it is notable that of all the institutions devised by the founders of the United States, the Senate alone has, in any marked degree, fulfilled their expectations. The Presidency, notwithstanding the elaborate machinery intended to place it above party, is now the chief prize of contending factions. "The venality of the [State] legislatures has become a byeword and

* *Essays on Government*, p. 83.

a reproach." * The House of Representatives is a House of corrupt adventurers, the salaried servants of Bossdom-and-Ringdom, where "single thought is civil crime and individual freedom mute." But the Senate, although doubtless "the State legislatures are often guilty of shameful corruption," † in the choice of Senators, preserves a much higher level of integrity and wisdom than the lower chamber. "Once in the Senate, a man may serve his country with fearlessness and honour." ‡ And it is, at this moment, "one of the most powerful political bodies in the world." § Now "the Senate of the United States," as Sir Henry Maine has pointed out, "is in strictness no more a democratic assembly than the House of Lords. It is founded on inequality of representation, not on equality." ‖

But let us come to our own country. It is often said that a reform of the House of Lords is the necessary complement of the reform of the House of Commons. And that is true, though for a reason not usually in the minds of those who make the assertion. One immediate effect of the Reform Act of 1832 was to purge out of the House

* Jennings's *Eighty Years of Republican Government in the United States*, p. 122.

† *Ibid.*, p. 121.

‡ *Ibid.*, p. 161.

§ Maine's *Popular Government*, p. 226.

‖ *Ibid.*, p. 186. Each of the forty-four States comprising the Union, whatever its size, is represented by two Senators.

of Commons some of its most valuable elements and greatly to debase it. In 1833 Coleridge said, "You see how this House of Commons has begun to verify all the ill prophecies that were made of it—low, vulgar, meddling with everything, assuming universal competency, flattering every base passion, and sneering at everything noble, refined, and truly national." * And from that time until now, the character and tone of the House have sunk lower and lower, until it has offered us the spectacle of honourable Members belabouring one another on the floor, while spectators in the gallery, not unnaturally, hissed and cried "shame." It is the true function of the House of Lords to supply the deficiencies of this degraded and decadent assembly, and to remedy its blunders. In a speech of Mr. Gladstone's at Edinburgh on the 27th of September, 1893, I find the following proposition: The Lords "are not the representatives of the people." The answer is simply this: "It all depends upon what you mean by 'the people.' If you mean the populace, the proposition is true. The House of Lords does not represent the populace, and that is precisely its great merit, nay, its very *raison d'être*. If you mean what the Romans meant by *populus* and the Greeks by δῆμος, if you mean the nation, the proposition is not true. The House of Lords, even as at

* *Table Talk*, p. 215.

present constituted, is far more truly representative of that which makes the nation what it is, of its wisdom, its experience, its culture, its independence, its great historical traditions, its imperial instincts, than the House of Commons." So much must be clear to any dispassionate observer. Equally clear must it be to him that to enable the House of Lords to maintain its proper position in the national counsels two reforms are necessary. The first is the suspension or extinguishment, at the instance of the Lords themselves, of the peerages of those who are a public scandal and an open disgrace to their order. Let me not be misunderstood. It is no part of the duty of the House of Lords to make inquisition into the details of any peer's private life, after the manner which approves itself to the prurient apostles of social purity. But it is fitting that peers notorious for conduct which, if they were in the army, would entail the loss of their commissions, as unworthy of an officer and a gentleman, should be deprived of honours which they dishonour. And I can conceive of nothing better fitted to justify Mill's sneer against the Conservatives as "the stupidest party," than their persistent indifference, nay, their dogged opposition to this reform.

But there is another reform much more necessary and important, and much more far-reaching, which should be applied to the Upper House. It is

at present constituted by heredity and selection. The importance of the principle of heredity, no one even superficially acquainted with contemporary science will doubt. But certain it is that in the House of Lords, as actually existing, selection does not adequately operate.* No doubt, members of that House, especially those of them who feel that their assembly is the Ark of the Constitution, are the most proper persons to propose such a remodelling of it as may enable it to breast the surging waves of the democratic deluge. Unfortunately they, for the most part, too much resemble those antediluvian Conservatives of whom it is written, "They did eat, they drank, they married wives, they were given in marriage—until the flood came." So does it threaten to be with this generation. It may therefore be permitted to a student of political science to sketch briefly, and in the barest outline, a scheme which may, perhaps, be not unworthy of their Lordships' consideration, for the reconstruction of their Chamber in accordance with the needs of the times, by the wider application to it of the principle of selection.

Now, to deal in the first place, then, with the existing body of peers sitting in the House of

* I believe Mr. Bryce entirely well warranted when he writes: "In England, during many years, thinking men of both parties have been convinced that something ought to be done to reconstruct the Upper Chamber."—*The American Commonwealth*, vol. i. p. 489.

Lords by hereditary right, I would submit that direct selection might well be employed in respect of them, as it has been employed for well-nigh two centuries in respect of the Scotch peers, and for the better part of a century in respect of the Irish. The peers of England, of the United Kingdom of Great Britain, and of the United Kingdom of Great Britain and Ireland, numbering close upon five hundred, are now entitled to sit and vote in the Upper House. Certainly not more than one-tenth of them take part habitually in the business of the House; nay, are ever seen in it, save upon the rarest occasions. I do not know that the public interests lose by their absence. It would certainly be no loss to them, but rather a gain, if they were present by representation. I would suggest that the five hundred peers now sitting by hereditary right should be represented by one-tenth of their number. Perhaps no better process could be devised for that purpose than the one set forth by Mill.* The sixteen representative Scotch peers are elected for each Parliament. The twenty-eight representative peers of Ireland are elected for life. I would not disturb these arrangements; but the fifty representatives of the peerages of England, of Great Britain, and of Great Britain and Ireland, might be elected for a term of seven

* See his *Considerations on Representative Government*, p. 246.

years. Variety of tenure is, in itself, a positive advantage.

The principle of representation might, however, be also indirectly applied to the hereditary peers in whatever peerage, by allowing the holding of certain great positions to entitle them to sit and vote in their House. This category should certainly include the Prince of Wales (Duke of Cornwall); the hereditary Earl-Marshal and the hereditary Great Chamberlain; all peers holding the Lord Lieutenancy of a County, or the rank of Field-Marshal, or Admiral of the Fleet, or filling or having filled the office of Cabinet Minister, Lord Chamberlain, Lord Chief Justice of England, Master of the Rolls, Ambassador, Viceroy of Ireland, India, or Canada, or Governor of any Indian presidency or British colony.

The space obtained in the House of Lords by the elimination of so many of the hereditary peers now entitled to seats there, might be filled, to some extent, by life peers.* The Crown should

* These peers should be nominated originally in the Act for the Reform of the House of Lords, vacancies being subsequently filled up as they occur by the Crown. Among them might be a certain number of eminent Colonists. I do not think that any other mode of representing the Colonies in the Upper House is practicable. Mr. Macpherson's interesting work, *The Baronage and Senate*, contains an elaborate scheme for converting that House into a sort of Imperial Legislative Council. The scheme appears to me to belong to the domain of what Milton calls "Atlantic and Utopian politics which can never be drawn into use."

have the power of bestowing a life barony, carrying with it a seat in the House of Lords, upon, say, one hundred commoners, of unusual distinction for public services, or in literature, art, or physical science. In every case the claims of the recipient of a life peerage should be fully set out in the *London Gazette* containing the announcement of his appointment. The Bishops of the Established Church and the Lords of Appeal in Ordinary, should sit in the Upper House, as at present.

The prerogative of the Crown to create life peers should not extend farther than I have described. But it should have the power to confer a hereditary peerage on any such peer, and, as at present, to raise any hereditary peer from a lower to a higher grade: but not otherwise to create new hereditary peerages, except in the case of princes of the blood royal, and of the Lord Chancellor, who, however, if he preferred it, might receive a life peerage as a Lord of Appeal in Ordinary. And no peer, in whatever peerage, should be eligible for a seat in the House of Commons.

A House of Lords, reconstituted on these lines, would be lifted above the vulgar range of party politics, and would be the most powerful Senate in the world. It would represent all those higher elements of the national life which are already so much weakened in the House of Commons, and

which must inevitably become weaker. It would express "the judgment as contrasted with the emotion" of the nation; or, to use the words of the framers of the American Constitution, it would act as a curb on "the propensity of a single numerous assembly to yield to the impulse of sudden and violent passions." * It would bring to the service of the country what Mill has described as those "better qualifications for legislation than a fluent tongue and the faculty of getting elected by a constituency" which, he truly asserts, "exist and may be found if sought for." † It would represent the force of reason against the force of numbers; it would assert the sanctity of right against the brutality of might. It would do much to safeguard that ethical sentiment of the country which Hegel has called "the mainspring of Democracy." It would restore and preserve to us, as perhaps nothing else could, the reality of self-government.

I am concerned in this volume with First

* *The American Commonwealth*, vol. i. p. 164.

† *Considerations on Representative Government*, p. 100. Of course, the ultimate power must reside somewhere. In case of the Lower House insisting on a Bill sent up to the Lords in two successive Parliaments, and rejected by them, a conference of the two Houses might be held in Westminster Hall, in which, without debate, a vote might be taken on issues previously agreed upon, the decision of the numerical majority of the two branches of the Legislature, thus united, being final.

Principles rather than with their application to practical politics. I trust, however, I may be pardoned, in view of the debt which every man owes to his country, if occasionally—as just now—I have gone beyond my proper scope by indicating how certain of those principles might be carried out. The question may be asked, Is there any prospect that any remedies or palliatives for False Democracy will be adopted? Do the signs of the times point in that direction? I think there is such a prospect, however dim. I think the signs of the times are beginning so to point. Certainly, I find among the more considerable publicists of Continental Europe a well-nigh unanimous consent in the opinion expressed by Bluntschli: "The radical vice of our constitutional systems is that they take the individual vote as the unique point of departure." It is surely significant that such strenuous Liberals as M. Desjardins in France, and Herr Schäffle in Germany, insist upon the representation of *interests* as necessary for the rational organization of modern democracy. M. Desjardins, indeed, who is addressing primarily French readers, speaks, as it were, with bated breath. He compares Democracy, as it is at present, to a conqueror intoxicated with victory, and resting on the field of battle; watching with jealous eyes its conquests, and apt to be alarmed by a word, a gesture, that may seem to threaten them. Still, he thinks that the abuses of unlimited numerical

force must cause even the least clear-sighted to reflect; that Democracy, "majeure et maîtresse d'elle-même," may set itself to organize its victory, may itself open the door to some reforms; he thinks that the representation of interests may be regarded as "a desideratum of the future." * Herr Schäffle, while justly regarding the complete elementary representation of nations by universal suffrage as a great step, not to be retraced, in political progress, insists on the absolute necessity of adding to it the representation of inequalities of fact, of all those local and social interests of the body politic which play so necessary and so important a part in the co-ordination and subordination of civil life.† Even in our own country it is at last beginning to be discerned that the qualities of insight, knowledge, wisdom, not to say patriotism, are not the necessary or even the probable product of universal and equal suffrage operating by ballot-boxes; that, ever comparatively

* Page 238. It is one of M. Desjardins' many pregnant observations, "Ce qui fait le principal obstacle à l'établissement de la liberté politique dans les républiques modernes, c'est que la force du nombre y tend à tout remplacer" (p. 227).

† "Ich die vollständige Elementarvertretung der Bevölkerung als einen grossen, nicht mehr umzustossenden Fortschritt, als das eine und hauptsächliche Stück ächt neuftzeitstaatlicher Volksvertretung ansehe, welchen man das andere gliederungsmässige zur hinzuzufügen braucht, um all' die grossen Gefahren einseitiger Geltung des allgemeinen Stimmrechtes zu bannen."—*Deutsche Kern- und Zeitfragen*, p. 135.

rare—*minora saniora*—they are proportionately more difficult to find as the conditions of social life become more complicated; that they are indispensable for good government; and that the gravest political problem of the present day is how to render them available for the general benefit. The discredit which has overtaken the old orthodox political economy is advancing surely—though perhaps *pede claudo*—to claim as its own the Rousseauan political philosophy, which is simply another manifestation of spurious individualism. On all sides I find indications that the cult of majorities is losing its hold upon those who were once its most enthusiastic votaries.*

We may trust, then, that, in time, public

* One of the most significant of such indications is supplied by the following remarks of Mr. George Julian Harness, the last survivor of the Chartist Convention of 1839. The occasion on which they were made was a gathering at Newcastle, in February, 1897, of a number of people to pay him a tribute of respect and esteem upon his attainment of his eightieth birthday —respect and esteem amply merited by his entire sincerity of purpose, utter disinterestedness, ungrudging self-sacrifice, and unswerving devotion to the faith that was in him.

"I know we are in the way of being congratulated on having obtained most of the points of the Charter. Well, we have vote by ballot, no property qualification, an approximation to equal electoral districts, and a very wide extension of the suffrage. Whether we have an equally wide extension of intelligence to make a right use of the vote, is a matter I will not now discuss. Whether the present Parliament, elected on a democratic basis, is much superior to, or even compares favourably with, Parliaments elected on a restricted suffrage—Parliaments that contained such men as Buller, Molesworth, Roebuck, Leader, Wakley,

opinion will recognize organic unity as better than atomistic uniformity; the force of reason as superior to the force of numbers. I say "in time;" for mere argument is not sufficient for these things. To determine great public issues by counting heads, is just as demonstrably absurd as to determine them by measuring stomachs. But mere logic goes only a short way in such matters. There is a wise observation of Mr. Herbert Spencer's: "A wave of opinion, reaching a certain height, cannot be stopped by evidence, but has gradually to spend itself." It does spend itself. Carlyle, looking out upon the world with old, sad eyes, pronounced it to be "fast rushing to total anarchy, and self-government by the basest." The judgment would be true if things progressed in a straight line. But they do not. "Inest in humanis rebus quidam circulus." The very greatness of the evil in False Democracy indicates a remedy. According to that word of ancient wisdom, the generations of men have been made "sanabiles." There is a certain principle of

Duncombe, Sadler, and Lord Ashley—is doubtful. Indeed, Parliaments seem to me to have fallen into discredit. In our case we have a mob of seven hundred gentlemen, most of whom are of no earthly use, except to vote as they are directed by party leaders. . . . There is a feeling abroad, not only in this country, but in others—France, Germany, Italy, the United States, and our Colonies—that Parliaments are played out, and that some better legislative machinery will have to be devised. I shall not live to see it, but that question will have to be seriously entertained by political philosophers and practical politicians."

recovery in human nature. The reasonableness of the universe is not less certain than the supremacy of duty. We may not believe that our race, of which reason is the most distinctive attribute, will permanently recede from rational principles in politics, or elsewhere. The stars above us, the graves below us, speak to us—the heirs of all the ages—of a nobler faith: they bid us trust, not faintly, the larger hope, and admonish us to do what in us lies for its realization.

"Yet yonder the presage
Of spirits is thrilling,
Of masters fulfilling
Our life with their message
Of just men made perfect.

"They weave in the starland
Of silence, as ever,
For work, for endeavour,
The conqueror's garland,
And bid us 'Hope onward.'"*

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* I am indebted to Mr. Walter Sichel for this admirable translation of Goethe's well-known verses—

"Doch rufen von drüben
Die Stimmen der Geister,
Die Stimmen der Meister:
Versäumt nicht zu üben
Die Kräfte des Guten!

"Hier winden sich Kronen
In ewiger Stille,
Die sollen mit Fülle
Die Thätigen lohnen!
Wir heissen euch hoffen."

CHAPTER VII.

THE SANCTIONS OF THE STATE.

THE thought with which we ended the last Chapter may well serve to begin this. It is, indeed, a thought which has been ever with us, throughout the present work, and which may be called the keynote of what I have written. Reason, manifesting itself in ethics, is man's most distinctive attribute. It is the first law of his being: the right rule of the action, whether of the individual or of the State. "The moral laws of nature and of nations," Shakespeare says, in one of his noblest lines. And so Hooker: "Nature itself teacheth laws and statutes to live by [which] do bind men absolutely, even as they are men, although they have never any settled fellowship, never any solemn agreement amongst themselves what to do or not to do." "The law of a commonwealth [is] the very soul of a politic body, the parts whereof are by law animated, held together and set on work in such actions as the common good requireth." * But

* *Ecclesiastical Polity*, book i. § x.

a law implies a sanction. That is a necessary part of it, distinguishing it from a mere counsel. What are the sanctions of "laws politic ordained for external order and regiment amongst men?" Or, to put it more shortly, What are the Sanctions of the State? That is our topic in this Chapter.

To answer that question, let us pass from the master just cited to a greater. The first sanction of the State is in the individual conscience. We should obey "for conscience' sake," as St. Paul teaches. And so Aquinas, amplifying this thought in words cited in the Third Chapter: "If laws are just, they have a binding force in the court of conscience in virtue of the Eternal Law from which they are derived:" and in which, as he elsewhere observes, the rational creature participates. But if, as must too frequently happen, the human race being what it is, a man, through defect of will or nature, will not obey for conscience' sake, there is another argument to enforce his obedience: the argument from "wrath"—to quote St. Paul again. Let us hear Aristotle unfold it—

"If mere reasons were sufficient to make men well-behaved, then, as Theognis says, 'Many and great would their rewards have justly been.' . . . But these seem to have no power to dispose the bulk of mankind to goodness. For it is not the nature

of the bulk of mankind to obey from a sense of shame, but from fear; nor do they abstain from evil because it is wrong, but because of punishment. . . . The bulk of mankind live by feeling; they pursue the pleasures that they like, and the means thereunto, and shun the contrary pains; but they have no thought of, as they have no taste for, what is right, and fair, and truly sweet. . . . The man who lives by passion will not listen to the voice of reason, nor can he understand it. And when this is a man's state, how can any arguments effect a change in him? It would seem, indeed, as if passion were deaf to argument, and yielded to force only. . . . Law has a coercive sanction, although it is the reasoned conclusion of abstract wisdom and intelligence." *

"Laws politic, ordained for external order and regiment amongst men," possess, then, a penal as well as an ethical sanction. And—significant commentary upon human nature—it is this penal sanction which is almost always meant when the sanction of a law is spoken of. There cannot be a "societas sine imperio." The civil magistrate, who is clothed with the State's authority, beareth the sword, and beareth it not in vain. He is "a revenger, to execute wrath against him that doeth evil."

Such is the penal sanction of the State. The end of the State, as we have seen, is to maintain its rights and the rights of its subjects. Its courts of justice attend continually upon this very thing. Rights may be enforced there by actions arising from contract or quasi-contract; from delict or quasi-delict. And certain gross

* *Nicomachean Ethics*, x. 9.

infringements of right, violating the public order, and branded as crimes, may there be visited with punishment. Let us proceed to consider this penal sanction of the State. We will first inquire what is the true conception of crime, and next, what is the true rationale of punishment.

The conception of a crime universally prevailing until quite lately, was—to quote the words of Kant—"an act threatened by the law with punishment:" of a criminal, one who wilfully commits such act, and who, therefore, rightly incurs the punishment. The primordial principle upon which the penal legislation of the civilized world has hitherto rested is that crime has its root in volition; that a man can be held criminally responsible for a nefarious deed only when he is at liberty to do or to abstain from it. Thus the German Penal Code (art. 51): "No act is punishable when its author, at the time of its perpetration, did not know what he was doing, or was in a mental state which excluded the *free exercise of his will.*" Similarly the Hungarian Penal Code (art. 76): "An act is not imputable to one who commits it in a state of unconsciousness, or whose intellectual faculties were so disturbed that he had no longer his *free will.*" To the like effect

the Italian Penal Code (art. 46): "No man may be punished save for a *voluntary* action or omission." That is the doctrine, too,—not to multiply quotations—of the criminal law of England, France, and Austria, and, we may say, of the whole world. But a school has arisen which insists that this first principle of penal legislation, so universally accepted, is wrong; which, in the name of "science," offers us an entirely new conception of crime, and proposes an entirely new method of dealing with criminals. It may not be a very numerous school, but it is a very noisy one. And as shouting is certainly a power in this age, its pretensions may be worth examining.

We are told by this school that we are to study crime scientifically; and, in fact, a new science, or what purports to be such, has been invented for that purpose, and christened "criminology" or "criminal anthropology." Its votaries have expounded their views in numerous and diverse publications, of which, perhaps, the most instructive are the Transactions of the Congresses of Criminal Anthropology held from time to time. First, then, what is criminal anthropology? Professor van Hamel, a shining light at these gatherings, defines it as the study of the penal sciences by the Positivist method.* M. Dimitri Drill tells

* *Actes du Troisième Congrès International d'Anthropologie Criminelle*, p. 339.

us that "it makes a study of the criminal himself in his very various types, the criminal real and concrete, as life, the court, and the prison present him, analyzing him according to *data* purely scientific, and by the aid of exact methods of all kinds which apply equally to the study of other natural phenomena." * But what is crime in the new science? "It is impossible at this time of day," M. Danville insists, "to found the notion of crime upon the hypothesis of responsibility, if one admits that this hypothesis presupposes free will; for, besides that such a conception starts from a point of view which is rather that of metaphysics, and unfit, therefore, for any attempt at practical application really scientific, such as is necessary in this matter, it offers numerous and evident contradictions with the observation of facts, which seems to exhibit to us, in the place of this vague, ill-defined liberty, a rigorous determinism more conformable with the general laws of science." † M. Danville does but express in the sentence, which thus drags its slow length along, the views of the whole sect of criminal anthropologists, who, however divided else, agree that crime is merely the result of social and biological factors.

The new science, then, is frankly determinist,

* *Actes du Troisième Congrès International d'Anthropologie Criminelle*, p. 39.

† *Ibid.*, p. 303.

and treats with small respect what its exponents term the *soi-disant sens moral.** Its founder, Signor Lombroso, is, indeed, something more than a determinist. His doctrine is that a criminal belongs to a special type of humanity, and is absolutely and inevitably predestined to crime from the moment of his birth; that the true account of the murderer, or the burglar, as of the poet, is *nascitur non fit.* This dogma, however, appears to be now out of fashion. "Il semble que le type criminel de Lombroso ait vécu," said one of the orators at the Brussels Congress.† But it is an article of faith among criminal anthropologists that we must regard the delinquent as dehumanized (*déshumanisé*), as abnormal, by which they mean suffering from an anomaly unfitting him for self-adaptation to social life;‡ that the common idea, "no crime without moral responsibility," is incompatible with scientific facts.§ Crime, indeed, in the only sense the word has ever borne among men, does not exist for the doctors of criminal anthropology: the malefactor is not really criminal at all. He is to be regarded as a psycopath, a moral invalid, the victim of a mind diseased, of an organization malformed, impoverished, or incomplete; of a temperament

* *Actes du Troisième Congrès International d'Anthropologie Criminelle,*" p. 34.

† *Ibid.*, p. 278.

‡ *Ibid.*, p. 304.

§ See *Abnormal Man*, by Arthur Macdonald, p. 45.

hallucinative or epileptic;* and of what M. Drill calls "the peculiarities of external influences, whether of the climate and nature of his country, or of his social environment."† And with the notion of crime, the notion of punishment also disappears. There are only two valid reasons, we are told, why a psycopath, a moral invalid, an abnormal man, should be repressed: namely, for the protection of society against those tendencies of his which are dangerous or disagreeable, and for the cure of his defective adaptability to the social environment.

Such, in brief outline, are the theoretical positions of the new science. Let us now glance at its practical application, first, to the study, and, secondly, to the treatment of those whom it is still the fashion to call criminals. By way of a specimen of a "scientific" diagnosis of a malefactor, take the following contribution by an eminent specialist, Signor Guido Rossi, to the *Archivio di Psichiatria, Scienze Penale ed Anthropologia Criminale*:—

"S. C., 38 years of age, born in Turin, a typefounder by trade; condemned twice: the first time, ten-year sentence for cruelty to father. While in prison he attempted suicide twice. Being unable to work, he wrote his history upon a vessel. Always suffered sensations of heat in the head; was subject to

* According to some eminent criminal anthropologists, murderers, burglars, and fraudulent persons are the victims of epilepsy, or of a tendency to epilepsy.

† *Actes du Troisième Congrès International de Anthropologie Criminelle*, p. 40.

vertigo; had an alcoholic attack and epileptic prison insanity —*follia carceraria epilettica*—during which he broke the glass in the window, for having been punished excessively; did not think in such moments of the possibility of being punished again; had a true morbid epileptical hypochondria. His physical examination gave: Pallid skin, thin chestnut hair, abundant beard, thin moustache, blue iris; nose long, and crooked teeth: median incisors hypertrophied, the lateral decayed; slightly projecting ears, squint in left eye, paralysis of the eyebrows. Craniometry: anterior-posterior diameter, 182 millimetres; transverse, 151; anterior-posterior curve, 340; transverse, 317; total circumference, 540; cephalic index, 83; cranial capacity, 1530; a depression at the union of the frontal and parietal, not evident whether it is due to a wound or not; lacks the ethnic type; a scar on right hand, arising out of a dispute after gambling. Sensibility: with Faradaic current, the right hand feels at 32, the left hand at 35; touch gives 3 millimetres for left and 2 for the right. Meteorological sensibility is moderate; two or three days before bad weather he is restless. He is credulous; was made to see a bottle of black wine under a white paper. . . . The dynamometer gave 46 for left hand, 53 for the right. Motility: gait, awkward; speech, stammering; writing, good; knee-jerk exaggerated; had a simian agility since infancy. He walks often without consciousness of where he goes; this is one form of propulsive epilepsy; at certain moments there comes to him a desire to destroy everything, and often he does it. He does not believe in any religion. He sleeps uneasily; commenced to like wine at 10; was forgetful; smoked; liked gambling; is fond of striking; knows the criminal slang. His father was 44 at the birth of S. C.; his mother 50; his father drank much, but supported the wife, and was never in jail. The mother played much at lottery; his sister was mother of thirteen sons, all healthy, except one who died, disease unknown. He was studious in his four elementary classes; said he never had difficulty in learning. He reads the *Cronaca dei Tribunali*. He does not like the present system of government; would like the republican form."*

* Quoted by MacDonald, *Abnormal Man*, p. 58.

The most perfect example of the treatment of malefactors according to the new science, is supplied by the famous Elmira Reformatory in the State of New York. In that institution there are some fifteen hundred male inmates—the word "prisoner" is tabooed—not known to have been previously imprisoned for high crimes, and of various ages between sixteen and thirty. They are committed to the institution indeterminately —that is, for no fixed period, but until its authorities are satisfied that they are "morally, intellectually, and physically capable of earning a living," and then they are discharged. The plan pursued for their reformation has been described as "a gigantic system of coddling." The notion of retributive justice has, of course, no place in it. The efforts of the authorities are directed towards the improvement of the physical health of the inmates by abundance of fresh air and exercise, by pleasant and easy employment, and by a copious—we might, indeed, say a luxurious—diet. The elevation of their minds is pursued by instruction in various branches of knowledge, such as "Drawing, Designing, German, English and American History, Business Law, Arithmetic, Physical Geography, Economics, Political Science." * It is sought to compass their moral elevation by an appeal to self-interest through the medium of

* Tallack, *Penological and Preventive Principles*, p. 99.

Utilitarian ethics. Classes of what is called "Practical Morality" are held for the discussion of such questions as "Is Honesty the Best Policy?" "The Ethics of Politics," "The Abolition of Poverty:" and the inmates are encouraged to deal with these and similar topics in essays, which are occasionally printed in the weekly journal published in the Reformatory. A paper written by one of them on a cold snowy day in January, 1888, compassionately described the wretched homes, almost visible from the walls of the establishment, where ill-fed and ill-clad children, and wives of unemployed or weary men, were crouching in the cold, and contrasted their lot with that of the convicts, adding: "Here, at this prison, 'tis the dinner hour; up from the great dining-hall below rises the fragrant odour of good food, and the hum of animated voices, with rippling laughter interspersed. The food is hot, and sufficient as to quantity; the apartments are warmed with steam, and after the short day is passed the electric light brightens things for the long evening: long, but not dreary, for books are abundant." * The Reformatory library is vaunted as containing "the best contemporary publications, among which they specify the novels of Alexandre Dumas, Eugène Sue, Ouida, Bulwer, Jules Verne, and others. There is also a liberal supply of newspapers and periodicals." †

* Tallack, *Penological and Preventive Principles*, p. 99. † *Ibid.*

The inmates of Elmira are classified in three grades: "On entry each prisoner is placed in the middle stage. If he does not earn a sufficient number of good marks by his labour, conduct, and studies, he is put down into the lowest grade. But if he obtains a good rank in marks, he is promoted in six months to the highest one. If he remains for six months in this, he may be liberated on parole for half a year, but he can remove into another State, or out of reach, if he chooses to do so. If his conduct during that period is clearly known to be unsatisfactory, he is recalled to prison for the remainder of his term, if he can be arrested; but if he has avoided misbehaviour whilst on 'parole' he is absolutely released from liability to undergo further detention." * Before the prisoners are "parolled" it is in general arranged, either by their own friends or by the correspondents of the prison managers, that suitable situations shall be secured for them. Mr. Z. R. Brockway, the warden and governor of the institution, states that "so-called indulgences are freely used [there] for their value in promoting reformation." † Asceticism appears to be discountenanced. Thus, at p. 48 of the *Annual Report for* 1898, under the head of "Practical Ethics," the convicts are exhorted: "Let us not confuse the virtues and strength

* Tallack, *Penological and Preventive Principles*, pp. 98–100.

† *Ibid.*, p. 101.

of temperance with the vicious weakness of total abstinence." *

Such is the new science as practically applied. What are we to say of it? I would first observe that its method of studying criminals, as exemplified in the case so elaborately described by Signor Rossi, would seem absolutely useless. What profiteth it to know that S. C., or any other criminal, or number of criminals—assuming that their account of themselves is true, which is a great assumption—attempted to commit suicide, or had "alcoholic attacks" and "epileptic prison insanity," that their noses are long and crooked, and their median incisors hypertrophied, that they do not believe in any religion, and would like the republican form of government? Science means a knowledge of the causes of phenomena, and a reasoned exposition of those causes. What science can possibly underlie, or issue from, such a farrago of observations, even if multiplied to infinity? Equally unscientific appears the method pursued at Elmira. Sickly sentimentality seems a truer account of it. And, surely, judged by the standard of the criminal anthropologists themselves, it must be pronounced a ghastly failure. Its *modus operandi*, apparently, is this: to raise the standard of comfort in the minds of convicts, and to convince them that it will be more advantageous for them not to break the law, or, at all events, not to be

* Tallack, *Penological and Preventive Principles*, p. 306.

found out in breaking it, for the future; it seeks to persuade them—to adapt a phrase of Professor Huxley's—that in seeking the laws of comfort they will find the laws of conduct. How far it really succeeds in indoctrinating them with this view, and in leading them to act upon it, is by no means certain. Major Griffiths well remarks: "Trustworthy statistics are not forthcoming. The reports made on those who have been enlarged extend over rather a brief space of time. The supervision is apparently continued for only six months, which is scarcely sufficient to prove permanent radical cure." * But even supposing, as the admirers of the system contend, that eighty per cent. of the Elmira men become "reformed," who does not see that their reformation—what is called reformation †—is achieved at the cost of a frightful injury to the community? The first object of penal repression, according to the criminal anthropologists themselves—on this they seem pretty well agreed—is the protection of society. Now, the bond of society is obedience to law. And the law is operative through its penal sanction. But the Elmira system renders void that sanction. Punishment, in the proper sense, and that moral disapprobation of which punishment is the evidence, have no place in it.

What—taking human nature as it actually is

* *Secrets of the Prison House*, vol. i. p. 12.

† Improperly, as I shall show later on.

—what must be the effect upon society at large of such a spectacle as that which the convicts of Elmira present? Is murder or burglary likely to be diminished by the vision of well-fed and well-clothed murderers and burglars, spending their brief period of seclusion from the world in apartments warmed by steam, brightened by the electric light, and resounding with "the hum of animated voices" and "rippling laughter," their days an unbroken round of

> "Moderate tasks and moderate leisure,
> Quiet living, strict-kept measure,"

(but not too "strict kept"), which Matthew Arnold has commended as "The Second Best"—amusement and instruction going hand in hand? Is this just—even as Utilitarian morality accounts of justice—towards the millions of poor who are taxed for it? Poor who by arduous effort just manage to keep themselves out of the police-court, scantily fed, thinly clothed, filthily lodged, and assuredly unable to beguile their too often enforced idleness, and the cold and hunger which accompany it, by "the novels of Alexandre Dumas, Eugène Sue, Ouida, Bulwer, Jules Verne, and others," and "a liberal supply of newspapers and periodicals"? Surely Major Griffiths is well warranted when he observes that "the Elmira system, if generally adopted, might be followed by unexpected consequences. Much less favoured but more honest

persons might be induced to take up crime as a profitable career, the avenue to a comfortable future, with well-stored mind and the means of acquiring a competence."* A significant comment upon these observations is supplied by the fact that in ten years the population of the Elmira Reformatory nearly trebled.

This fact may suffice to show how the dangerous classes have received the gospel preached unto them by the new school of criminal anthropologists —a school chiefly of account, perhaps, as a sign of the times in which we live. It is, in truth, a manifestation of that tendency (of which I spoke in the First Chapter) so observable everywhere and in every department of human thought and action, to bring everything within the boundaries of physical science—the only science we are told: to subject everything to the laws of matter. One of the most favourite accusations hurled by differing criminal anthropologists at one another in their congresses is, "You are talking metaphysics." It seemed to be assumed as certain, whatever else might be doubtful, that metaphysics have no right to exist. For my own part, I must take leave to hold that the whole subject of crime, scientifically considered, falls under the domain of moral philosophy, and that moral philosophy is based upon metaphysics, and can have no other basis. Moral philosophy treats *de actibus humanis*, of acts properly

* *The Secrets of the Prison House*, vol. i. p. 14.

called *human*; that is, acts which are voluntary as proceeding from a man's will, with a knowledge of the end to which they tend, and free as so proceeding that under the same antecedent conditions they might or might not have proceeded. And the criterion whereby it judges of such acts is their conformity with, or opposition to, man's rational nature. Those which conform with that nature are morally good; those which oppose it are morally bad. It is man's princely and perilous prerogative, as "man and master of his fate," to choose between them. For that choice he is morally responsible. We praise or blame him—and the oracle within his own breast confirms the exterior judgment—according as his choice is rightly or wrongly made. Of such praise and blame an ethical element is the essence. This is the common teaching of the great masters of morals in all ages.*

So much must suffice to indicate what appears to me the only real foundation of moral science. The doctrine of Kant as to the identity of liberty and morality seems profoundly true. It is sometimes said that the doctrine of free will is of small practical consequence. And so Mr. Sidgwick observes that it has little or no bearing on systematic ethics.† But, surely, systematic

* Aristotle has summed it up in a pregnant sentence: Πάντας ἐπαινοῦμεν καὶ ψέγομεν εἰς τὴν προαίρεσιν βλέποντες μᾶλλον ἢ εἰς τὰ ἔργα (*Eth. Eud.*, ii. 11).

† *Methods of Ethics*, bk. i. c. v. §§ 4 and 5.

ethics must deal with the grounds of moral obligation; it must rest on the philosophy of morals. A simple string of precepts, a mere manual of rules, cannot claim to be systematic ethics. And is not the question whether or no a man can comply with these precepts or rules, in the highest degree practical? I am altogether aware, and cheerfully concede, that many who hold a rigid Determinism are blameless, nay, beautiful, in their lives. But for myself, I must agree with Fichte's well-known observation: "If any one adopting the dogma of necessity should remain virtuous, we must seek the cause of his goodness elsewhere than in the innocuousness of his doctrine: upon the supposition of free will alone can duty, virtue, and morality have any existence."

To pursue this subject at length would be impossible here. I may, however, be permitted, before I pass on, to make two observations concerning it. And first I would remark how much the controversy is darkened by the habit of many who deal with it to use words without knowledge. No doubt this comes from want of metaphysical training in many cases, but not in all. Such an excuse, whatever it is worth, may validly be urged for Mr. Herbert Spencer. But it can hardly be pleaded for Dr. Bain. And when we find that learned man describing free will as "a power that comes from nothing, has no beginning, follows no rule, respects no known time or occasion, operates

without impartiality," * it is difficult to acquit him of consciously caricaturing a doctrine which he dislikes. What we mean by freedom of volition is the power of acting from a motive intelligible to, and chosen by, a self-conscious being, in virtue of the property of his will to be a law unto itself, or, in the oft-quoted words of Kant, "a faculty of choosing that which reason independently of natural inclination declares to be practically necessary, or good." And in treating *de actibus humanis* we distinguish between different kinds of freedom. A deed may be free, and therefore deliberate, we

* *The Emotions and the Will*, p. 500, 3rd edition. M. van Hamel, represented, I dare say rightly, as "a savant of the first order," sought, at the Brussels Congress of Criminal Anthropologists, to demolish liberty of volition by the following argument: "If you are in a restaurant, and choose between two *plats*, it is not your free will, but your stomach which speaks" (*Actes*, etc., p. 272). The argument seems to me most unfortunate for M. van Hamel's purpose. No doubt in a mere animal the stomach would ordinarily decide whether he should or should not devour food that came in his way. I say "ordinarily," for a well-trained dog, in which, we may observe, what Aristotle calls *μιμήματα τῆς ἀνθρωπίνης ζωῆς*, would often be influenced by the recollection that his master had forbidden him to eat this or that. But when a man orders his dinner at a restaurant, other voices besides that of the stomach are wont to make themselves heard—the voice of his physician, for example, if he is dyspeptic or gouty; of his religion, if he practises one into which dietary prescriptions enter; of his purse, unless he is prepared to dine regardless of expense. In making up his mind (as the significant phrase is) what *plats* he will select, he will choose between the motives which thus speak to him; and such choice is what we mean by free will.

say, *actu, habitu, virtute*, or *interpretative*. We fully allow "that every man, during by far the greater part of his life, is solicited by conflicting attractions, and that, in the very large majority of such instances, a certain definite or decisive inclination or impulse of the will spontaneously ensues;" * but it does not follow from this, as Determinists maintain, that the term "will" really signifies no more than a certain amount of reflex action, accompanied by a certain degree of sensation.

My second observation is, that the objections urged at the present day against freedom of volition are no new discovery. They come before us decked in the garb of modern science. But there is not one of them, of any real weight, which was not met and sufficiently answered by the Schoolmen centuries ago. For example, Hume's doctrine on free will is simply the translation into non-theological language of the old error revived by Jansenius that the power of delectation—whether of vice or virtue—which is stronger at the moment, draws the will by an irresistible necessity, as by its own weight. "Among conflicting motives the strongest must prevail." But how are we to judge of the strength of the various motives? What common measure is there for determining it? There is none. Dr. Martineau well observes: "If, as Bain admits, the only test

* *The Philosophy of Theism*, by William George Ward, vol. i. p. 246.

of greatest strength is the victory, we are simply landed in the tautology that the prevailing motive prevails." *

What is commonly accounted the most formidable argument for determinism is derived from the doctrine of evolution now so generally accepted. I confess I do not understand why it is thus accounted. The question whether, and in what sense, a consciousness of right has been evolved, seems to me to present no special difficulties. Evolution of the organism is required, up to a certain degree, for the senses to act. But we do not call the organism the efficient cause either of sense or perception. Another kind of material and social evolution may be indispensable for the exercise of the hitherto dormant moral faculty. But how does it follow that such evolution is the true *cause*, and not merely a *conditio sine qua non?* The truth is that these disputants have not the least notion of the nature of intellect. Here we come to the real issue. The school of which I am speaking will have it that the intellect is nothing more than a bundle of associations; "the aggregate of feelings and ideas, active and nascent, which there exists," † as Mr. Spencer puts it. And so Dr. Bain: "The collective 'I' or 'self' can be nothing different from the feelings, actions, and intelligence of the individual." ‡ "*Can* be nothing

* *A Study of Religion*, vol. ii. p. 233.

† *Principles of Psychology*, § 219.

‡ *Mental Science*, p. 402.

different!" It is an admirable example of "affirmativeness in negation."

I venture, nevertheless, to maintain that it can be, and is, something very different. I maintain that the intellect is, in fact, a power of perception and judgment *sui generis*; that the unity of consciousness, the *Ichheit* of the Ego, the selfhood of the Me, is the original and ultimate fact of man's existence: and that the will is *ego-agens*. I quite understand the disinclination of this school of philosophers to allow that man is anything more than a sequence of physical action and reaction; that there is in him an activity superior to matter. To admit that would be to lay the axe to the root of their most cherished speculations. But I demur when they appeal to us in the name of science. Must we not then build upon science? they ask. Yes, assuredly; but what science? Not the science of matter only, but a science which embraces the whole man; which observes and weighs everything about him; which ignores and puts aside nothing. "Humani nihil a me alienum puto" is the true scientific principle. But the scientists shut the eyes of their understanding to those facts of human nature—a vast array—which will not square with their theories. And the inadequacy of their doctrine to life is its sufficient condemnation. Thus, to give an instance pertinent to the subject now specially before us, if the province of

physics is to "become coextensive with knowledge, with feeling, with action," conterminous with all regions of human thought, if physical and mathematical laws are everywhere supreme, and men are mere automata, then the only power left in the world is brute force, and "unawares morality expires." But Professor Huxley will have it—to quote his words in controversy with me some years ago—that "the safety of morality lies neither in the adoption of this or that philosophical speculation, or this or that theological creed, but in a real and living belief in that fixed order of nature which sends social disorganization upon the track of immorality as surely as it sends physical disease after physical trespasses."* I will take leave to cite a portion of what I said in reply, because it has not been answered, and I venture to think it unanswerable:

"Physical science, as such, can know nothing, good or bad, about morality: 'il n'y a rien de sale ni d'impudique pour la science,' writes Diderot in the *Rêve d'Alembert*, correctly enough. . . . The morality of an act, we must surely all admit, is not a physical quality; it resides in the motive, and, again, in the nature of the act: whether, namely, the latter is conformable to a standard of perfection which the mind alone apprehends. The outward effects of two actions may be precisely similar, as when an assassin slays his victim and an executioner hangs a convicted criminal. But one of these acts will be foul murder; the other a righteous ministration of retributive justice. Will Professor Huxley point out any science which is not a part of philosophy or theology and is

* See my work *On Right and Wrong*, p. 241 (3rd edition).

yet competent to discriminate between the two? What can 'science' affirm about them unless it becomes philosophy or theology? Nothing whatever. Physical science perceives only what the senses grasp, and the senses know nothing of justice and injustice. Is it by physics that we know when social disorganization is the consequence of immorality? I trow not. To physics the deeds of a Wellington and of a Genghiz Khan are 'molecular changes,' and no more. Physical science may predict that, if certain physical actions take place, certain physical structures will be injured or broken up. But it can never tell what is the moral quality of those physical actions. Physical science may, indeed, mark the difference which in time becomes outward and visible between those who cultivate morality and those who trample it under foot. But there its competency stops; its powers of interpretation are exhausted. What lies at the root of the difference it can never tell. It has no means of discerning virtue and vice, which are of the will and of the intellect. And when it proceeds, unscientifically, to formulate its ignorance into a creed, it is doing its best not to subserve morality, but to ruin it." *

It appears to me, then, that the world will have to adhere to the old paths in ethics, since the new ones so manifestly lead nowhither—a sufficient *reductio ad absurdum*. The universe is rational, not irrational; reason is at the heart of things. And if the school of physical philosophers will not agree with us in this, we may at all events fairly ask them to refrain from using our ethical terminology, which, in their system, is absolutely unmeaning. They may tell a man of whose doings they disapprove that he is foolish, ill-advised, short-sighted; that he is preferring lower pleasures to higher; that his conduct would be

* *On Right and Wrong*, pp 243–264.

viewed by Mr. Spencer as "imperfectly evolved," as not adjusted to achieve "totality of life in self, in offspring, and in fellow-men." They cannot tell him that he is *wrong*, for right and wrong, in the old and only intelligible sense, do not enter into their doctrine. The distinction between pleasure (*bonum delectabile*) and virtue (*bonum honestum*) does not exist for them. They recognize only one kind of goodness, the test of which is a balance, on the whole, of agreeable feeling over disagreeable. And when they proclaim that "the welfare of society in general must be put in the foreground," they have no answer to give to the question, Why must it? The sufficient reply to their exhortations is that no principle causally determining a man's welfare can be cited which should lead him to sacrifice himself to the social organism; that no man can be more highly evolved than he actually is evolved, according to Mr. Spencer's own showing; that the quality of pleasure is a matter of taste; that the true folly is to postpone the certainty of a present and pungent gratification to the possibility of a future and feeble one. To which may be added that since we all follow necessarily the impulses of our organism, it is useless to admonish any man to do or to abstain from doing any act. Nor, according to Mr. Herbert Spencer, is this matter for regret. Have we not his assurance that "freedom of the will would be at variance with

the beneficent necessity displayed in the evolution of the correspondence between the organism and the environment"?*

It is satisfactory to observe that these considerations were, to some extent, urged upon the criminal anthropologists assembled at their Brussels Congress, and received a certain amount of recognition. M. Meyers, a magistrate of distinction, descended among them, and deemed it his duty to testify that by denying free will they were ruining the fundamental principles of penal law and of repression. He continued, in a passage which is well worth quoting:

"You do not admit free will, and yet you have just naïvely told us that a man can do what he wishes. What a contradiction! You maintain that you do not know how to resist the least of your tendencies; and, on the other hand, you affirm, not only that you can modify yourselves, but that you can modify others! Please be logical. If you are victims of your defective organization, if you are urged towards crime, be victims to the end, and don't say that you can change that fatal tendency by something which is not volition, which is not free will—for you don't admit that—but which still exists within you, in spite of all your denials. In your system there is no justification for repression: for why should the tendency of the murderer, which is to kill, yield to the tendency of the rest, which is to protect life? Your theory of social defence is that of force; for if you admit neither right, nor the moral law, I see nothing else except number and force, to justify repression. But are you quite sure that the interest of the greater number is always on the side of repression?" †

* *Principles of Psychology*, § 220.

† *Actes du Troisième Congrès d'Anthropologie Criminelle*, p. 260.

M. Meyers' vigorous remarks seem to have made a certain impression upon his hearers. One of the most accomplished and influential of them, M. Tarde, went so far as to express a doubt of their vocation. He began his very significant speech by suggesting that the question "Sommes-nous encore des anthropologistes criminels?" might possibly receive a negative answer. Lombrosism, with its fatalistic doctrine that the human machine is inevitably impelled to a predestined goal, that the will is "a negligible quantity," he pronounced to be dead. It was incompatible, he judged, with the application of any penal law whatever. He thought it a grave misfortune that criminologists had had to seek for recruits chiefly among physicists, anthropologists, and "aliénistes" (I preserve the French word lest I should give offence by speaking of mad doctors)—persons who, however distinguished in their own way, were little prepared by the nature of their occupations to bend their minds to the social *data* of the penal problem. He expressed satisfaction that the new current of their studies was turning towards the jurists. And he insisted emphatically, "Il faut reconnaître les caractères de la volonté qui n'ont assurément rien d'inconciliable avec le déterminisme scientifique." *

These are the words of truth and soberness.

* *Actes du Troisième Congrès d'Anthropologie Criminelle*, p. 336.

A scientific determinism is not in the least incompatible with a rational doctrine of free will. Determinism is the postulate of the physical and physiological sciences. Liberty of volition—a relative liberty, of course—is, as certainly, the postulate of the psychological and moral sciences. "Kein Mensch muss müssen," said Lessing. "The will," writes Schiller, commenting upon the dictum, "is the distinctive feature of man, and reason itself is only its eternal rule. All nature acts rationally. Man's prerogative is only that he acts with consciousness and will. All other things must. Man is the being who wills." * This is what Coleridge has called "the sacred distinction between person and thing, which is the light and life of all law, human and divine." No doubt the power of volition varies indefinitely. No doubt there are malefactors in whom it is practically inoperative; and these are the proper subjects, not of punishment, but of seclusion from human society, as unable to exercise the distinctive faculty which qualifies them for taking part in it. No doubt, too, the view of criminality taken by the existing penal legislation of the civilized world—I have indicated it in a previous page—is substantially correct, although some of its authoritative expositions may be lacking in scientific precision. As such must we account the dicta of not a few distinguished English

* "Ueber das Erhabene" (*Werke*, vol. xii. p. 245)

lawyers that the true test of criminality is knowledge. This is not so. It is not enough that the perpetrator of the noxious deed should have known what he was doing, and should have known, moreover, that it was wrong and against the law. To make a man really culpable there must be the *mens rea*, the criminous intention. And by "intention" I mean, as the Schoolmen define it, "the free tendency of the will towards some end through some means." Our law, indeed, to quote Lord Mansfield's well-known words, "judges not only of the act itself, but also of the intention with which it is done." Obviously, the law is right in so judging. It cannot divine the workings of the mind, or explore the penetralia of conscience, but it presumes that a man intends the necessary, nay, even the probable or natural consequences of his own acts. The presumption is indeed rebutable. It may be rebutted by showing that the man's volition was paralyzed, that he could not help himself. The plea is rightly regarded by the courts with extreme suspicion. Some of our best criminal judges have expressed their "alarm at the admission of irresponsible impulse as an excuse for crime." On one occasion Mr. Justice Byles was trying a case of theft, and counsel for the prisoner, in setting up the defence of kleptomania —the word appears to have just then come in— observed, "Your Lordship knows of that particular

disease." To which the Judge replied, "Yes, and I have been sent here to cure it." We have advanced since then in our knowledge of maladies of the will. Kleptomania and homicidal mania are as much facts as dypsomania and nymphomania.* They are facts which it is peculiarly difficult to establish. And, unquestionably, the evidence of specialists, by which it is usually sought to establish them, should be accepted with great reserve. Whatever criminal anthropologists may achieve—and I am far from denying that in this direction they may achieve much—cases will probably always occur in which persons really irresponsible are punished as if they had been capable of willing, and had willed, to do the prohibited act laid to their charge. It is lamentable, but it is inevitable. We judge not with all-seeing eyes, but *ex humano die*. There is a "border-land of injustice" into which the wisest and most cautious cannot help straying from time to time.†

* On this subject see a painfully interesting paper by Dr. Magne in the *Actes du Troisième Congrès International d'Anthropologie Criminelle*, p. 153. The latest of the world's Penal Codes —the Italian—has the following very judicious section: "47. Non e punibile colui che nel momento in cui ha commesso il fatto, era in tale stato di deficienza ò di morbosa alterazione di mente da togliergli la conscienza dei proprii atti ò la possibilità di operare altrimenti."

† But, perhaps, we need not stray into it quite so frequently as we do. The English Prison Commissioners in their Sixteenth

We must say, then, with the old Greeks, that only τὰ κατὰ προαίρεσιν ἀδικήματα, wrongful acts intentionally done, can be accounted crimes. Such is the right account of culpability. Let us go on to the next point, and inquire: What is the true *rationale* of punishment? The criminal law is unquestionably designed for the protection of society and the prevention of further crime. But is this the whole account of it? Is it only a regulation of police? That seems to me a very inadequate conception of it, perverting it in its theory, robbing it of its dignity in the life of men, and emptying it of its vivifying idea. The proper conception of punishment is that it is the correlative of culpability. The penalty which human law threatens for a specific act is either just or unjust. If just, it presupposes a moral obligation in respect of the act, as in the case of culpable homicide: "Thou shalt do no murder." If there is no such moral obligation, there is no culpability, and therefore the threatened punishment is unjust. So it was when the decree was made that all men who would not fall down and worship the golden image that Nebuchadnezzar the king had set up, should be cast into the midst of a burning fiery furnace. Justice—let me again insist upon this: such insistence is

Report, give a communication from their medical inspector, Dr. Grover, in which it is stated in the year 1893, eighty-one persons were tried and sentenced while insane (p. 44).

not superfluous—is of the very essence of human law:

> "there's on earth a yet auguster thing,
> Veil'd though it be, than parliament and king."

And that thing is justice, from which all our enactments derive their binding force on conscience, so far as they are binding. Legal justice is but one aspect of what metaphysicians call general justice, which is, as Ulpian defines it, "the constant and perpetual will to render to every one his due." Now, crime is the forcible negation of right, the violent disturbance of the rational order of society. And punishment—"the other half of crime," Hegel calls it—is something due to the reasonable part of the criminal. By his criminous act the criminal has subjected himself to it. "Ipse te pœnæ subdidisti," the maxim of Roman jurisprudence says. It is his right to reap what he has sown. There is in our nature a deep-rooted instinct which testifies to the connection between punishment and crime. It is finely remarked by Dr. Martineau: "The conscience of mankind refuses to believe in the ultimate impunity of guilt, and looks upon the flying criminal as only taking a circuit to his doom."* There is a human debt of crime as well as a divine debt; retribution is due for the breach of the social order; the community is

* *A Study of Religion*, vol. ii. p. 46.

rightly avenged upon the disturber of the public peace. The International Prison Congress, held in London in 1872, very properly insisted, in one of their Resolutions, "the prisoner must be taught that he has sinned against society, and owes reparation."

It is well to insist on this verity in an age like the present, which shrinks from the sterner realities of existence, and delights in "mealy-mouthed philanthropies." One of the primary instincts of human nature is the desire for retribution. Nor is it confined to man. We find it, like the instinct of self-defence, throughout the whole realm of animate existence. "Dem Schwachen ist sein Stachel auch gegeben." There can be no question that these instincts are at the root of criminal law. As a matter of historical fact, we discern, as human society is evolved, three stages in the evolution of the idea of punishment. First, the right of vengeance is restricted to the injured person or to his next of kin (*ultio proximi*). Then comes the notion of pecuniary compensation (*Wehrgeld*). And lastly, the idea of public punishment is developed, and public authority is recognized as the proper and the sole "avenger to execute wrath upon him that doeth evil." But from the beginning it was discerned that this retribution was righteous; that it was in conformity with the divine law which primitive humanity

believed to be in man, and around man, and above man. Nor was this simple faith at fault. Neither the physical world, nor the moral gives any support to the notion that unmixed "benevolence" is at the heart of things. The Infinite and Eternal, in whom all ideals are realized, is not only Truth, Purity, Love, but Justice. He is "Deus Ultionum"—the God to whom vengeance belongeth. Cardinal Newman has pointed out, in a powerful passage of the *Grammar of Assent*, that conscience primarily reveals Him under this Attribute of Retributive Justice.* And it is as the representative of the Supreme Moral Governor of the universe that St. Paul contemplates the civil ruler. "He is God's minister; he beareth not the sword in vain." The cry, "Avenge me of mine adversary," is the expression of a divinely implanted instinct of humanity. Like all instincts, it has to be brought under the control and discipline of reason.

* "Conscience suggests to us many things about that Master, whom by means of it we perceive, but its most prominent teaching, and its cardinal and distinguishing truth, is that He is our Judge. In consequence, the special Attribute under which it brings Him before us, to which it subordinates all other Attributes, is that of justice—retributive justice. We learn from its information to conceive of the Almighty, primarily, not as a God of Wisdom, of Knowledge, of Power, of Benevolence, but as a God of Judgment and Justice; as One, who, not simply for the good of the offender, but as an end good in itself, and as a principle of government, ordains that the offender should suffer for his offence" (p. 390, 5th ed.).

And when so controlled and disciplined, it becomes criminal justice.

Punishment, then, must be just; it must be rightly proportioned to the offence, so that, as Kant says, "the punished person, when he looks thereon, must himself confess that right is done to him, and that his lot is entirely commensurate with his conduct." * But what is the proper measure of penality? How graduate it to crime? The question is one of exceeding difficulty, and can be only approximately solved by us who know in part, who investigate not with "those pure eyes and perfect witness of all-judging Jove," but with the dim vision of the "purblind race of miserable men," trusting to testimony alike fallible and incomplete. The underlying principle of a just sentence is the *lex talionis*, in virtue of which his wrongful deed is returned on the offender.† The crude jurisprudence of primitive ages applied the principle literally: "an eye for an eye; a tooth for a tooth." In our deeper apprehension of the sacredness of human personality, we reject this severity as barbarous. "Misericordiam et judicium cantabo," sang the Hebrew bard: "My song shall be of

* *Kritik der Prak Vernunft*, Part I., book i. § 8.

† M. Zakrewsky told the Criminal Anthropologists at their Brussels Conference: "En ce qui concerne la loi du talion je ferai observer que nous ne sommes pas ici pour réfuter Moïse" (*Actes*, p. 258). This savant apparently believes that the *lex talionis* is an invention of "Moses."

mercy and judgment." But the rest of his canticle hardly corresponds with this exordium. "Implacable, unmerciful," is St. Paul's account of the Gentiles to whom he was sent. And what scholar can deny its correctness? It was reserved for Him whose gospel St. Paul preached, Him by whom, in the fulness of the time, grace and truth came, to manifest the Divine Attribute of pity, "unlimited in its self-sacrifice." "Misericordiam et judicium:" it is the explanation of the crucifix; and the lesson has sunk slowly—how slowly!—into the hearts and consciences of the nations that bear the Christian name. "Moses lapidat ut judex; Christus indulget ut rex," says St. Augustine.

> "And earthly power doth then show likest God's,
> When mercy seasons justice."

Again, who can say that circumstances are irrelevant in the judgment which right reason pronounces on each misdeed? They may gravely aggravate, they may largely extenuate, the offence. One stands aghast not less at the undoubting sincerity, the unhesitating good faith, with which our forefathers assumed the full responsibility of every malefactor for his noxious act, than at the inexorable and unintelligent severity with which they chastised him. Thanks to the growth of a milder and more rational spirit in penality, behind the delict we now see the delinquent: still, in all his degradation and dishonour, a *person*, with

claims upon, and rights against society, springing from the essential ground of human nature.

Still, however softened the application of the rule of retaliation, by it and by it alone, are the true kind and measure of punishment indicated.* The canon of Rhadamanthus: "If a man has done to him what he has done to others, that is the straight course of justice," expresses a deep and universal instinct of human nature; and instinct never deceives; there is always a reality correspondent with it. Offences involving cruelty, whether to men or animals, merit the infliction of sharp bodily pain, the most obvious and appropriate instrument of which is the lash. Crimes merely

* One great blot upon the administration of English criminal law is the absence of any uniform standard of punishment. I have myself heard men sentenced by different judges to six months' imprisonment and to six years' penal servitude for precisely the same offence, committed in circumstances which were practically identical; by which I mean that there was no element of extenuation in the one case, and no element of aggravation in the other. I may note, too, with what irrational severity offences against property are often punished, and what equally irrational lenity is displayed by many judges in respect of offences against the person. I remember the case of an old woman tried a few years ago at York before Lord Coleridge for stealing a piece of cloth. She had just undergone a sentence of ten years' penal servitude for stealing a door-mat. The Lord Chief Justice sentenced her to three months' hard labour, remarking, "I do not know what is to become of punishment. If people are to be sent to ten years' servitude for stealing a door-mat, what is to become of them for half-killing their wives?"

against property, when the motive has been to acquire ease or enjoyment by the violation of another's possessory right, properly subject the wrong-doer to the deprivation of ease and enjoyment by the hard labour and scanty fare of prison life. Again, there is one crime—the supreme crime—for which nature herself exactly prescribes the just chastisement. Only the punishment of death is commensurate with the offence of wilful murder. "Ye shall take no satisfaction," enjoined the Hebrew legislator, "for the life of a murderer which is guilty of death, but he shall be surely put to death, for the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it." The precept is true for all time, and for all stages of political evolution, not because it was laid down for the guidance of a small tribe of Western Semites, in the infancy of civilization, but because it is founded on the nature of things,* and is in

* I am, of course, writing from the point of view of Libertarianism. But it is interesting to observe that Criminal Anthropologists, regarding man as an automatic organism, as a machine, with no more rights—in the proper sense of the word—than any other machine, arrive at the same conclusion. Baron Garofalo, a shining light of the school, expressly lays down that "murderers who act in the absence of grave injury on the part of their victims," must be regarded "as beings morally degenerated and perpetually unsociable;" that "the impossibility of adaptation of such individuals being recognized, it is necessary to eliminate them absolutely from society." "Nor," he argues, "if imprisonment for life were one means of elimination, should it be given the preference. For why should

accordance with the everlasting laws of human society and of eternal justice. "Homo res sacra homini." And he who violates that sacrosanct bond of human fellowship by wilful murder, forfeits his right to human fellowship: he dooms himself, by his own act, to be cut off from the "kindly race of men," and to expiate, by his own life, the shedding of innocent blood.

The first function, then, of punishment is to punish, to vindicate the majesty of outraged justice, to dissolve that *vinculum juris* to which

beings who no longer form part of a society be preserved for life? It is hard to understand why citizens, and even the families of the victims themselves, should be obliged to pay a tax in order to feed and clothe the perpetual enemies of society." I quote from the full and correct summary of Garofalo's teaching given by MacDonald, *Abnormal Man*, p. 90. It may be noted that in Italy, where the death penalty has been abolished, there are now between three and four thousand convicts undergoing sentences of life imprisonment for murder: sentences which are never commuted. Mr. Tallack, in his work on *Penological and Preventive Principles*, well points out that "death may be mercy itself compared with the prolonged injury inflicted upon the spiritual and mental powers, by means of the hopeless misery of the solitary cell, on the one hand, or by the corruptions of filthy and blaspheming convict gangs on the other. A process thus continued may ultimately be as *real* an execution, but by slow operation, as the more visible and instantaneous deprivation of life. . . . The Italians in their hatred for capital punishment, have substituted for it a worse penalty" (p. 238). This is perfectly true. A sentence of such life imprisonment is simply a more cruel and more cowardly mode of inflicting the death penalty. Hence, perhaps, the favour it has found with the baser kind of Italians, as pandering to their two characteristic vices.

crime gives rise, by meting out to the transgressor his due. Its second function is to deter the offender from repeating his offence, and others from imitating it. This is so generally admitted that I need but to touch upon it here. I may, however, remark that corporal pain is not only the appropriate penalty for deeds of violence, but the best deterrent from them. The most unscrupulous in inflicting it are, usually, the most cowardly in shrinking from it.* To which I would add that the objections commonly urged to the penalty of whipping, that it is disgraceful and that it brutalizes, are, to speak plainly, mere sentimental claptrap. Sir Henry Maine, in one of his best speeches, has briefly indicated the true answer to them. With regard to the first he admirably observes: "The difficulty is that ordinary punishments are not felt by criminals to be disgraceful, and if therefore a punishment can be discovered which raises under all circumstances the sense of shame, that punishment will have a value of its own." His reply to the second is just as conclusive: "What is intended when it is said that whipping brutalizes? Is it that it appeals to the offender's animal nature as distinguished from his moral nature? Why every punishment deserving

* Such was my experience in India. While exercising the powers of a District Magistrate in that country I passed some fifty or sixty sentences of flogging, almost all of which I saw executed.

the name inflicts physical pain. . . . When you sentence a criminal to punishment you deliberately make up your mind to render him extremely uncomfortable; and, for my part, I cannot in the least understand why one form or degree of physical pain should brutalize more than another." *

But the chastisement of criminals is also intended to act as a warning to others. Aristotle's words, "The bulk of mankind obey from fear, nor do they abstain from evil because it is wrong, but because of punishment," are, I suppose, as true of our times as of his. Hence the example of the punished person is of general utility; nor is it any real hardship to him that it should be so. No man liveth to himself. We are members one of another, knit together by a necessity arising out of the nature of things, which is rational, in the social organism whose law is reason. And a man who will not obey that law, but abandons himself to mere animal impulse, divests himself, so far as in him lies, of his dignity as a *person:* he approximates to the level of irrational existence: he is made like unto horse and mule which have no understanding, and may be used like them, not as an end to himself, but as an instrument for benefiting others. It is on this consideration that Aquinas founds his justification of capital

* *Life and Speeches of Sir Henry Maine*, p. 122. I translate my quotations out of the *obliqua oratio* in which this speech is unfortunately reported.

punishment. "Man by wrong-doing withdraws from the order of reason, and thereby falls from human dignity, so far as that consists in man being naturally free and existent for his own sake. . . . And therefore, though to kill a man while he abides in his native dignity be a thing of itself evil, yet to kill a man who is a wrong-doer may be as good as to kill a wild beast. For worse is an evil man than a wild beast, and more noxious, as the Philosopher says."* I may add that the death penalty is the supreme terror of men of blood. "I don't care what I get, so long as I don't swing," was the expression of one of them, tried not long ago for the capital offence, and, unfortunately, found guilty only of man-slaughter. The sentiment is common to the class.

But there is a third end of punishment. It is, first, vindictive, and, secondly, deterrent. It should also be, if possible, reformatory. To deter a criminal from further crime is not, necessarily, to reform him. Reformation means a great deal more than deterrence. It means deterrence *from a moral motive.* It means the conversion of the will from bad to good. And so the admirable inscription, which greatly impressed John Howard, placed by Clement XI. over the gate of St. Michele, the first of the model prisons and the pattern of the rest: "Parum est improbos coercere

* *Summa Theologica*, 2. 2, q. 64, a. 2 ad 3.

pœna nisi probos efficias disciplina." We are told that we may reasonably expect punishment to prick the conscience, to bring crime before the criminal's mental vision in true colours and right proportions, to lead him to desire his own spiritual and moral amendment, and to work with those who are striving to change him from a bad man to a good. Is it reasonable to expect this from punishment?

It seems eminently reasonable to expect it from the supreme punishment—the punishment of death. Green well observes, "The just punishment of crime is for the moral good of the criminal himself . . . even if a true social necessity requires that he be punished with death. The fact that society is obliged so to deal with him, affords the best chances of bringing home to him the anti-social nature of his act." * Experience amply proves that the most hopeful means of working the reformation of a murderer—by reformation, let me remind my readers, I mean the conversion of his will from bad to good—is supplied by the certainty of his impending execution. However seared his conscience, however atrophied his moral sense, however blurred his vision of judgment to come, this certainty often quickens him into new spiritual life, and works, as Schopenhauer expresses it, "a great and rapid change in his

* *Works*, vol. i. p. 510.

inmost being." "When [condemned criminals] have entirely lost hope," this keen observer of human nature adds, "they show actual goodness and purity of disposition, true abhorrence of committing any deed in the least degree bad or unkind; they forgive their enemies, . . . and die gladly, peaceably and happily. To them, in the extremity of their anguish, the last secret of life has revealed itself."* They obtain "a purification through suffering."

What has just been said of the efficacy of capital punishment as a reformatory instrument, applies in some, though a much less degree, to the punishment of flogging. The lash is eminently fitted to bring home—say—to the garroter the anti-social nature of garroting. The experience of physical pain by those who have barbarously inflicted it, whether on men or animals, for the gratification of lawless passions, affords the best chance of enabling them to realize the hideousness of cruelty, and of awaking them to new spiritual life. Concerning imprisonment as a reformatory agency, we must speak much less hopefully. If we weigh the matter well, a gaol is ill adapted for the purposes of an ethical seminary. To borrow words from a recent most powerful and pathetic novel, prison life with its manifold degradation, eating into a man's flesh, becoming infused into his blood,

* *Die Welt als Wille, etc.*, vol. i. bk. 4, p. 465.

and running for ever through his veins,* seems fitted rather to quench all sense of personality, and so to destroy the very foundation upon which character must be built up. The thought of the venerable Pontiff, cited just now, which fired the zeal of John Howard, is, in itself, beautiful and true. The practical application, or rather perversion, of it in our own day, by sentimental faddists, is neither beautiful nor true. Their spurious humanitarianism, ignoring the true idea of crime, the true rationale of punishment, amply merits the scorn poured upon it by Carlyle in the *Latter Day Pamphlets*, and by Dickens in *David Copperfield*. A very different authority, Sir Henry Maine, has well observed, "The theory that all punishment should be directed towards the reformation of the criminal has been thoroughly tested. . . . What is the result? Twenty or thirty years of costly experiments have simply brought out the fact that, by looking too exclusively to the reformatory side of punishment, you have not only not reformed your criminals, but have actually increased the criminal class." † I believe I am warranted in saying that eighty per cent. of those who have been in prison, commit crime again.

This is certainly a gigantic failure. One reason of it is excellently indicated in certain words of

* *Derelicts*, by William J. Locke.

† *Life and Speeches*, p. 123.

the late Archbishop Ullathorne, himself most successful in dealing with the worst criminals: "Many advocates of political and social reform are admirable in inventing expedients for regenerating human nature, if it were not that the nature to be regenerated is missed out of the calculation." * One of the common errors of the present day is to take an optimist view of humanity, flatly opposed to facts. It is the delusion to which the *philosophes* of the last century gave such wide currency, and which their principal English admirer and exponent has succinctly formulated, and blessed as a "cheerful doctrine:" that "human nature is good:" that "the evil in the world is the result of bad education and bad institutions." † I certainly do not incline to underrate the mischievous effects of "bad education and bad institutions." But assuredly it is a gross delusion to attribute to them exclusively, or even principally, the evil of the world. No; the ultimate source of the evil of the world is far deeper than defective social mechanism. If anything is absolutely certain it is that there is innate in every human being a propensity which renders him prone to evil and averse from good. "Nitimur in vetitum semper cupimusque negata," said the Roman poet. It is invariably true. You may get

* *The Management of Criminals*, p. 24.

† Morley, *Diderot*, vol. i. p. 5.

rid of the name of original sin; but the thing which the name represents is a primordial permanent ingredient of human nature, explain it how you will. It is aboriginal, not adventitious; congenital, not the product of bad education and bad institutions. It is more in one, and less in another. But, in whatever proportion, it is always there, a taint transmitted by heredity. It is this taint which vitiates the will, and that vitiation breeds evil deeds. To hinder a man from such deeds by fear of consequences—let me once more insist upon this—is not to reform him. Every real reform must rest upon the cure of the vitiated volition. It must be moral, not mechanical; psychical, not physical; it must start from within, not from without. Its motive power must be something which acts directly and powerfully upon the will. Where shall we find such an agent?

In good education, we are often told. But education is a question-begging word. If mere intellectual instruction is meant by it—as is generally the case—experience is conclusive that such instruction is not in itself moralizing. Mere knowledge does not convert the will from bad to good. How should it? Lombroso, in his *L'Uomo Delinquente*, testifies that the number of malefactors is greatest, relatively, in the liberal professions. An English expert, who speaks on the subject with an authority possessed by few, tells us that "some of the

worst thieves are those who have previously had a training in Board Schools, and that the most depraved girls and women are amongst the more educated ones."* No; mere knowledge is one thing. Virtue is quite another. Experience confirms the assertion that, taking mankind as a whole, the effectual reform of human nature can be achieved only by an agent above nature. "Philosophia dux vitæ," said the ancients. But what is philosophy? It is a theory of being, of speculative thought; its proper object to contemplate the world as a manifestation of spirit. A mere system of speculative physics such as, for example, Mr. Herbert Spencer's, however ingenious and interesting, is not philosophy at all. It is a true observation of Eduard von Hartmann: "Philosophy is essentially concerned with the one feeling only to be mystically apprehended, namely, the relation of the individual with the Absolute." The very function of philosophy is to raise man above the self of the senses and animal nature, and to approximate him to the Divine. I am far from denying, indeed I strenuously maintain, that in discharging that function, it may present a clear perception of ethical truth. Nay, I firmly hold that the human reason, rightly exercised, is adequate to the deduction of moral rules which

* Mr. Neame, "a Chief Superintendent of discharged convicts in London," quoted by Tallack, *Penological and Preventive Principles*, p. 217.

shall indicate the limits of right action. But how many of us are capable of laying hold of a system of abstract thought and of translating it into deed? For the vast multitude of men the only effective teacher of morality is religion, which affords it a sanction and reward, which incarnates it in august symbolism, and works upon volition by touching the heart. This is, and always must be, true of the overwhelming majority of mankind. It is pre-eminently true of the criminal classes with their domineering passions and debilitated wills. And here again I am glad to find myself in agreement with Sir Henry Maine. "The great agent of reformatory discipline in English gaols is the chaplain." * It was a saying of Dr. Colin Browning, a veritable apostle of the worst convicts, and that amid the enormous difficulties and discouragements of the old transportation times, "We hear much of various systems of prison discipline, as the Separate, the Silent, and the Congregate systems; but unless the Christian system be brought to bear with divine power on the understanding and consciences of criminals, every other system, professedly contemplating their reformation, must prove an entire failure." †

Again. A great obstacle to the reformation of criminals arises from forgetting that there are two

* *Life and Speeches*, p. 124.

† Quoted by Tallack, *Penological and Preventive Principles*, p. 285.

distinct kinds of offenders, requiring very different treatment. There are those whose past lives were blameless until they succumbed to strong temptation, and fell into crime; we may call them occasional offenders. There are habitual offenders, whose lives are a perpetual warfare against society. Of course, with regard to certain of the gravest crimes, such as murder or rape, it is hardly possible to discriminate between delinquents of these very different categories. But in cases of less serious offences, whether against the person or against property, we may and should discriminate. In such cases, the punishment of a first transgression should be short and sharp; and that for two reasons. Experience shows that a brief term of imprisonment often induces reflection, remorse, and resolutions to amend—resolutions which, in fact, are not unfrequently carried out; whereas a long one almost always hardens the novice in crime, who, moreover, when it has expired, finds his home broken up and his friends forgetful of him—serious obstacles to his return to the path of rectitude. A third conviction at the assizes, or at quarter sessions, should stamp a man as a habitual criminal, who, for the rest of his life, should forfeit his personal liberty, and should be reduced to a state of industrial serfdom. Nor would there be any real hardship in this. On the contrary, it would be a positive benefit to habitual offenders. If they reform at all, they reform while under penal restraint.

When left to themselves, they, almost invariably, fall away. One of the Reports of the Prison Commissioners quotes the testimony of a very experienced Protestant chaplain: "The majority of habitual criminals make excellent prisoners; it is only when restored to their liberty that they fail." It would be little short of a miracle if they did not. In spite of philanthropists, the difficulties in the way of their finding honest employment are, naturally enough, immense. On the other hand, the temptation to relapse, from force of old habit, and from the influence of former associates, is such as might well overmaster a stronger power of volition than that which they can, as a rule, oppose to it. I remember when visiting, some years ago, the great prison at Dartmoor, how much I was impressed by what the excellent Catholic chaplain there—now dead—told me of his painful experience in this matter. He observed: "It is a happiness to me when any of these poor fellows die here; they make a good end; if they went back to the world, they would, almost for certain, live badly and die badly." I add that the perpetual seclusion of habitual offenders is justly due to the community. It has been remarked, "We pay immense sums for a police to watch men and women perfectly well known to be criminals, lying in wait to rob and murder, and other immense sums to catch and try, *over and over again*, these criminals, who are shut

up for short terms, well cared for, physically rehabilitated, and then sent out to continue their prowling warfare against society." *

So much as to the true principles of penality. But there is still something to be said regarding the criminal. We cannot consider him as an isolated being apart from the society in which he struggled, and sinned, and suffered. Its responsibility for crime is as grave a question as his. I do not know who has more powerfully stated the question than Victor Hugo in *Claude Gueux*—that wonderful book which came as a revelation to the heart and conscience of the civilized world. Claude Gueux is a poor artisan in Paris; naturally intelligent, dexterous at his work, quite uneducated. He lives with a girl to whom he is not married, and has a child by her. One winter he finds himself out of work. There is no fire in the grate of his poor lodging, no food on the table. The man steals. His theft results in three days' nourishment and warmth for the woman and her baby, and in five years' imprisonment for himself. He is sent to the central prison of Clairvaux. There, the stupid tyranny of an official drives him to desperation, and he kills his tormentor. In due time he is brought to trial for the murder before the assizes at Troyes.

* Mr. C. Dudley Warner, a well-known American writer, quoted by Tallack, *Penological and Preventive Principles*, p. 104.

When sending the jury into their room to consider their verdict, the presiding judge asks him if he has anything to say. He replies, "Very little. Only this: I am a thief and an assassin; I have stolen and killed; but *why* have I stolen? *why* have I killed?" I take the case as Victor Hugo states it. And so taking it, can society be acquitted? "A fair day's wage for a fair day's work is as just a demand as governed men ever made of governing: it is the everlasting right of man," said Carlyle, in words quoted in a previous Chapter, and worth quoting a second time. Again, a prison should be a purgatory. Those who are confined in it are wronged if it be made a hell. Claude Gueux might well arraign society as accessory, by its injustice, to his crimes. In this country, at all events, we may congratulate ourselves that our poor-laws, whatever may be justly said against them—and I know too well how much may be justly said—leave no one to starve; and that the grave defects in the management of our prisons are due rather to the congenital stupidity than to the intentional cruelty of officials.

But there is much more than this to be considered with regard to the responsibility of society for crime. That huge menacing fact of the criminal classes, as they are called, may well send us to an examination of conscience. To speak of London alone, "the number of the *residuum* of habitual offenders and vicious loafers,"

in this great city, is estimated, by a very careful and competent authority,* "at scores of thousands." What has caused this *residuum?* The answer must be, To a large extent, poverty. But what is the cause of poverty? No doubt, in many cases, vice, of which it is the proper punishment; but, assuredly, in many more, injustice. The criminal classes are largely the outcome of English pauperism. Now, certain it is, as we saw in the Fourth Chapter, that the era of English pauperism began with the plunder, three centuries ago, of the religious houses which were, in the strictest sense, the patrimony of the poor, and of the thirty thousand religious guilds, which were the great institutions of thrift and mutual help. No less certain is it, that the giant growth of pauperism, in these latter days, is largely due to the iniquitous individualism which, under the specious formulas of "supply and demand," "freedom of contract," and "the course of trade," has withheld from the labourer, skilled and unskilled, his fair share of the fruits of his labour. The labourer has sunk into a pauper: the pauper into a vagrant, a loafer, a confirmed offender; and the class of habitual criminals has been formed as an element of modern society. The law of human progress is—

> "Move upward, working out the beast,
> And let the ape and tiger die."

* Mr. Neame, quoted by Tallack, *Penological and Preventive Principles*, p. 216.

But these unfortunates have retrogressed: they have moved downward, working out the man; and their faces have, more or less completely, lost the human expression: their lineaments irresistibly remind us of the wild animals to whose level they have well-nigh sunk—the wolf, the jackal, the panther, the hyena. And these degraded beings increase and multiply, giving the world a more vitiated progeny: children born with special pre-dispositions for crime.

What, then, are the remedies? They would seem to be chiefly three. First, what a distinguished Austrian jurist has called "the transformation of the existing order of rights (*Rechtsordnung*) in the interest of the suffering working classes"*—a transformation which is even now in progress, as every one that has eyes must surely see—will doubtless do much to diminish pauperism. Secondly, that addiction of adult habitual offenders to industrial servitude, which I have recommended in a previous page, is unquestionably the only effective way of dealing with them. Thirdly, the modification—nay, to a great extent, the eradication—of the terrible tendencies transmitted by them to their offspring, is possible. There is in human nature a principle of recovery, which, if rightly cultivated in childhood and youth, before habit has fatally developed the germs of evil, may

* "Das Recht auf den vollen Arbeitsertrag in geschichtlicher Darstellung," von Anton Menger: *Vorrede*, p. 3.

largely transform the vitiated character transmitted by heredity. And the instrument of that cultivation is a system of ethical discipline, of training of the will—this alone is education in the true sense—which, as experience demonstrates, will, in many cases, make of these unhappy children men fitted for their appointed place in the social order: ready, patiently and profitably, to fulfil their allotted tasks in it.

The poor in this world's goods we have always with us. And we may say the same of the poor in virtue. But only in a society which has lost, or largely forgotten, "the mighty hopes that make us men," does poverty degenerate into pauperism, and vice grow rankly into crime. Without those hopes—our special heritage among the tribes of animate existence—to lift us above the self of the appetites and the passions, we do not rise to the true level of *human* life, whether individually or collectively. This is not, indeed, a first principle in politics. But it is a first principle underlying all politics. The known and natural do not suffice for human society. It requires supersensuous, superhuman, spiritual ideals: ideals which point to a life beyond the phenomenal, where justice shall at length triumph, where its rewards and penalties shall be adequately realized: ideals which therefore witness to a Supreme Moral Governor who shall bring about that triumph and realization. This is the central thought, the

direct teaching, of the parable of Dives and Lazarus. It declares, in terms, that beyond the grave, the relative conditions of rich and poor will be completely inverted: that in the life of the world to come, restitution shall be made to those who have been disinherited in this life. On that teaching the poor lived throughout those ages which, whatever else they were or were not, most assuredly were "Ages of Faith." St. Edmund of Canterbury, in his *Mirror*, one of the most popular books in medieval England, lays it down, with startling plainness, that the rich can be saved only by the poor; for the poor are they of whom it is said, "Theirs is the Kingdom of Heaven," and only through them can the rich enter it. Dives has had his consolation here: the hereafter belongs to Lazarus; the rich man must share with the beggar in this world, if he would have fellowship and portion with him in the next. Such was the contribution of Christianity to "the social problem," as we now speak. I know well that this teaching has been perverted, or, rather, has been blasphemously prostituted, to an argument for retaining the masses in material and economical degradation, by representing the All Just as an accomplice in human wrong and robbery. Certainly, I do not so employ it. And the abuse of a truth does not vitiate its proper use. The question which I invite my readers to consider is: Can the social problem be—I do

not say solved, it will never be solved, but—rationally treated without that belief in the Divine Law of Righteousness, expressed in the teaching of Christ concerning poverty and riches? It is a question worth pondering. I shall leave my readers to ponder it, placing before them certain words of a great master—whose inimitable beauty and pathos, as I know too well, no translation can more than dimly adumbrate—which may perhaps aid them in the task, and which may fitly serve as the epilogue to this volume.

"A disaster—I might almost call it the disaster of our time"—Victor Hugo is reported to have said*—"is a certain tendency to bring everything within the limits of this life. Give to man, as his sole end and object, this earthly and material existence, and you aggravate all his miseries by the inherent negation: you lay upon wretches, already crushed to the ground, the unsupportable burden of Nothingness: you convert mere suffering, which is the law of God, into despair, which is the law of hell. Hence convulsions which shake society to its base. Assuredly, I am one of those who desire—no one in this place doubts it,—I am one of those who desire, I do not say sincerely, the word is all too weak, I desire with an ardour that no words can express, and by every possible means, to ameliorate in this life the material lot

* In the debate on the Falloux Law (1850).

of those who suffer. But the first of all ameliorations is to give them hope. How little do our finite miseries become, when an infinite hope is mingled with them. The duty of us all, be we who we may, whether we be legislators or writers, is to diffuse, to spread abroad, to expend, to lavish, under every form, the whole energy of society, in warring against and destroying misery: and, at the same time, to lead all to lift their heads towards heaven, to direct all souls, to turn all expectations, towards a life beyond this, where justice shall be done, where justice shall be requited. Let us proclaim it aloud: No one shall have suffered unjustly or in vain. Death is a restitution. The law of the material world is equilibrium: the law of the moral world is equity. God is recovered at the end of all. Let us not forget it: let us teach it to all: there would be no dignity in living — it would not be worth the trouble—if we were destined wholly to die. What lightens labour, what sanctifies toil, what makes man strong, good, wise, patient, benevolent, just, at once humble and great, worthy of intellect, worthy of liberty, is to have ever before him the vision of a better world, shining athwart the darkness of this life."

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